

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25709 of 2019

Arising Out of PS. Case No.-60 Year-2000 Thana- BARACHATTI District- Gaya

MD. IRFAN KHAN, Son of Ainam Khan, Resident at Mohalla - Karimganj,
P.S.- Gaya Civil Lines, Distt - Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shiv Pujan Singh Son of Sridhar Singh Resident of Village - Baijnathpur,
P.S.- Sitamadhi, Distt - Nawada.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Arvind Kumar Singh, Advocate.
Mr. Mukul Jee, Advocate.
For the Opposite Party/s : Mr. Mukeshwar Dayal, APP.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 20-06-2019

Heard learned counsel for the petitioner and
learned APP for the State.

2. Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of the order dated 21.02.2017 passed by the learned Judicial Magistrate 1st Class, Sherghati, Gaya in G.R. Case No. 221 of 2000 arising out of Barachatti P.S. Case No. 60 of 2000, Tr. No. 1108 of 2015 whereby learned Magistrate declared the petitioner and other accused persons as absconder and order dated 28.03.2018 passed by the learned Sessions Judge, Gaya in Criminal Revision No. 20 of 2018 whereby the learned Sessions Judge dismissed the revision petition of petitioner filed against the aforesaid order of the



learned Magistrate.

3. Factual Matrix of the case is that Barachatti P.S. Case No. 60 of 2000 was instituted under Sections 323, 341, 337, 427 and 379/34 of the Indian Penal Code against the petitioner and five other named accused persons on the basis of the written report filed by Shri Shiv Pujan Singh. After investigation of the case, I.O. submitted chargesheet under Sections 341, 323, 337 and 427/34 of the Indian Penal Code. After perusing the chargesheet and the case diary, learned S.D.J.M, Sherghati, Gaya took cognizance of the offence against four accused persons including the petitioner vide order dated 22.02.2001 and the case was fixed for appearance of the accused persons, but the accused persons did not turn up in the case and finally they were declared absconder by learned Magistrate and permanent warrant of arrest was ordered to be issued against them vide order dated 21.02.2017.

4. Being aggrieved and dissatisfied with the aforesaid order, the petitioner filed revision petition vide Cr. Revision No. 20 of 2018 before learned Sessions Judge, Gaya and learned Sessions Judge after hearing the parties dismissed the aforesaid revision petition of the petitioner vide order dated 28.03.2018.



5. It is submitted by learned counsel for the petitioner that after taking cognizance against the accused persons, no sort of process was ordered to be issued against the accused persons by the learned Magistrate and without order of the learned Magistrate, the process was issued. It is further submitted that without service of the summon, bailable warrant was issued and without execution of the bailable warrant, non-bailable warrant of arrest was issued against the petitioner and other accused persons and likewise without execution of non-bailable warrant, process under Sections 82 and 83 Cr.P.C. was issued against them and ultimately the petitioner and other accused persons were declared 'absconder' and permanent warrant of arrest was ordered to be issued against them vide order dated 21.02.2017. Aforesaid order was passed in utter violation of the provisions of law and against the principal of natural justice which is liable to be quashed and the order passed by the learned Revisional Court observing the aforesaid order as interlocutory and said revision time barred is also not sustainable and is liable to be set aside.

6. From perusal of the record, it appears that cognizance of the offence against four accused persons including the petitioner was taken on 22.02.2001 and after



taking cognizance of the offence, the case was transferred to the Court of Shri S. K. Singh, Judicial Magistrate 1st Class, Sherghati, Gaya fixing the date 24.04.2001 for appearance of the accused persons. On 03.03.2001, the record was received by the transferee court. There is no order of the learned Magistrate to issue any sort of process against the accused persons and without any order of the learned Magistrate, some process was issued on 26.04.2001, though it is not mentioned as to what kind of process was issued on the said date and without service of aforesaid process, on 27.09.2001 bailable warrant was ordered to be issued which was issued on 03.10.2001. Likewise without any report of execution of bailable warrant, non-bailable warrant was ordered to be issued against the accused persons on 06.05.2003, but no non-bailable warrant was issued against the accused persons despite the aforesaid order and abruptly on 01.09.2003 process under Sections 82 and 83 Cr.P.C. was ordered to be issued against them. Again on 17.09.2004 process under Sections 82 and 83 Cr.P.C. along with non-bailable warrant was ordered to be issued through S.P., Gaya. Again on 16.03.2009 process under Sections 82 and 83 Cr.P.C. was ordered to be issued against the accused persons which was issued on 03.01.2017. There is nothing on record indicating



service/execution of any of the aforesaid process upon the accused persons but on 21.02.2017 without service/execution of the aforesaid processes, accused persons were declared absconder and permanent warrant of arrest was ordered to be issued against them by the learned Magistrate.

7. It is settled principle of law that subsequent process be issued after service / execution of earlier process upon the accused but the aforesaid order appears to have been passed by the learned Magistrate without service/execution of processes issued against the accused persons on earlier occasions and without there being anything that the petitioner was aware of the pendency of the case against him in any manner, hence aforesaid order is not sustainable.

8. In my considered opinion, aforesaid orders have been passed without service/execution of process issued against the petitioner and without knowledge of pendency of the case against him in utter violation of provision of law and there has been gross illegality and irregularity in passing the aforesaid orders. Though there appears to be some delay in filing the revision petition, but it is settled principle of law that justice should be done after hearing the parties and injustice should not be done merely on technicality and shutting down the



opportunity of hearing to the parties.

9. Having regard to the facts and circumstances of the case, aforesaid orders dated 21.02.2017 and 28.03.2018 passed by the learned Magistrate and learned Sessions Judge respectively are hereby quashed. Petitioner is directed to turn up before the learned Lower Court within one month and extend all sorts of cooperation in earlier disposal of the case. Accordingly this petition is allowed.

(Prakash Chandra Jaiswal, J)

mantreshwar/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	26.06.2019
Transmission Date	26.06.2019

