

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 25577 of 2014

Arising Out of P.S. Case No.-170 Year-2003 Thana- PATLIPUTRA District- Patna

Manish Kumar Singh, Son of Late Dr. T.P. Singh, resident of 2616 Crystal Falls Dr. Pearland, Texas, USA- 77584.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Madan Mohan, resident of House No. 31, Patliputra Colony, P.S.- Patliputra, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Abhimanyu Vatsa, Advocate
For the State	:	Mr. M. K. Khare, A.P.P.
For the Opposite Party No. 2	:	Mr. Jitendra Singh, Sr. Advocate Mr. Rajendra Narayan Singh and Mr. Jharkhandi Upadhyay, Advocates

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 07-03-2019

Heard learned counsel for the petitioner; learned A.P.P. for the State and learned counsel for the opposite party no. 2.

2. Learned counsel for the petitioner is permitted to make correction in the first paragraph of the application as well as in the pleadings with regard to the date of the impugned order. Let the same be done during the course of the day.

3. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for the following relief:



“That the petitioner is filing this application to quash and cancel the order dated 18.4.2012 passed by learned SDJM, Patna in Patliputra P.S. Case No. 170/2003 whereby and whereunder the petitioner has been declared absconder and a direction has been given to issue permanent warrant of arrest against him and get his name entered in the absconder’s register and upon passing of the said order, this Hon’ble Court may be pleased to pass such other order/orders, direction/directions as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

4. The opposite party no. 2 had filed Patliputra P.S. Case No. 170 of 2013, against the petitioner, his mother and brother alleging offences under Sections 498A/406/34 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, with regard to the treatment meted out to his daughter who was married to the petitioner. It appears that initially charge sheet was submitted against the brother and mother of the petitioner and the Court after taking cognizance has proceeded. However, later on supplementary charge sheet was also submitted against the petitioner and the Court had issued process and after sometime, he has been declared an absconder.

5. Learned counsel for the petitioner submitted that since the year 1990, he had become a non resident Indian working and residing in the United States of America and later on he has also acquired U.S. Citizenship in the year 1999. It was submitted



that at no point of time did the police ever record the statement or even contact him and, thus, behind his back, without there being a proper investigation, supplementary charge sheet has been submitted which itself is bad in law. Learned counsel submitted that in any view of the matter, it was incumbent upon the Court to ensure that the process as required under law are followed step by step at every stage. It is the duty of the Court to ensure that the first stage has been duly complied with before moving to the next stage. It was submitted that at no point of time, there was any service report before the Court with regard to either summons or warrant being effected on the petitioner, but despite that the Court proceeded to declare him as an absconder. Learned counsel submitted that the same is mockery of the procedure of the Court and clearly an abuse of the process of the Court.

6. Learned A.P.P., upon going through the Lower Court Records submitted that there is no endorsement in the official records to indicate that at any point of time any summons or warrants were ever served on the petitioner.

7. Learned counsel for the opposite party no. 2 very frankly submitted that the order impugned cannot be defended and the Court may proceed to quash the same. However, he further submitted that once the mother and brother of the petitioner, who



are accused in the same case and who had challenged the order of cognizance right till the Hon'ble Supreme Court without success, are aware of such development, it is but natural that the petitioner was also aware and him not appearing before the Court or challenging any order by which he may have been aggrieved, avoiding such appearance should also be taken judicial note of.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the order impugned cannot be sustained. Law mandates that before a Court exercises powers for appearance of an accused, the same has to be done as per the requirement of the provisions under the Code which prescribe that if initially summons are issued, there has to be materials to show that the same have been effected in the manner known to law. Then also, if the accused does not appear, the Court may move to the stage of issuing warrant, which may initially be bailable or even non-bailable, and even if such warrant is returned unserved with the requisition of the law enforcing authority that the accused is avoiding execution of such warrant, then the Court is required to move to the next stage, in accordance with law and declare the accused an absconder. In the present case, when there is a specific stand of the petitioner that he is a citizen of the United States of America since



the year 1999, it has to be presumed that his residence is in the United States of America and there being nothing in the records to indicate that such fact was taken note of or efforts were made to effect the warrant of arrest against him through the authorities in the United States of America, where he resides, the Court below appears to have proceeded without being conscious of the limitations of its power under the Code.

9. For reasons aforesaid, the application is allowed. The order by which the petitioner has been declared to be an absconder in Patliputra P.S. Case No. 170 of 2003, stands quashed.

10. However, the Court under its inherent power under Section 482 of the Code, for securing the ends of justice, is inclined to direct the petitioner to submit himself before the law in relation to Patliputra P.S. Case No. 170 of 2003 by taking steps which are required under the law or in the alternative to assail any order of the Court below which he may deem fit. However, he cannot avoid submitting to the law, which is impermissible.

11. As the Court has been informed that the petitioner is residing in the United State of America being a citizen of that country, the Court is inclined to grant him a grace period of three months during which no coercive steps shall be taken against him



to enable him, to take appropriate steps in accordance with law,
with regard to Patliputra P.S. Case No. 170 of 2003.

12. Let the Lower Courts Record be returned forthwith.

(Ahsanuddin Amanullah, J.)

P. Kumar

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