

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 3749 of 2015

Arising Out of P.S. Case No.-88 Year-1997 Thana- NAUTAN District- West Champaran

1. Najrul Mian, Son of Late Basarat Mian.
2. Safrul Mian, Son of Late Basarat Mian.
3. Maqsud Mian, Son of Najrul Mian.
4. Mahmood Mian, Son of Najrul Mian.
All Residents of Village-Bishunpura, P.S-Nautan, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Ismael Mian Son of Khusi Mian, Resident of Village-Dhumnagar, Purbari Tola, P.S-Nautan, District-West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Umesh Chandra Verma and Ms. Rashmi Jha, Advocates
For the State	:	Mr. Md. Arif, APP

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

ORAL JUDGMENT

Date : 03-05-2019

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

2. The petitioners have moved the Court under Section
482 of the Code of Criminal Procedure, 1973 (hereinafter referred
to as the ‘Code’) for the following relief:

*“That this is an application for quashing
the order dated 07.11.2014 passed by the learned
Sessions Judge, West Champaran, Bettiah, in Cr.
Rev. No. 192 of 2014 affirming the order dated
24.05.2012 passed by Sri Ajay Kumar, the learned
Judicial Magistrate, 1st Class, in Trial No. 1598 of
2012 arising out of Nautan P. S. Case No. 88 of 1997*



registered under sections, 147, 148,149, 447, 323, 307, 379, 452, 504 of the Indian Penal Code, whereby and where under the petitioners were declared absconders, and permanent non-bailable warrants of arrest have been issued against the petitioners without service of summons or bailable or non-bailable warrants of arrest or processes under sections 82/83 Cr. P.C. in utter violation of provisions of law.”

3. The grievance of the petitioners is that they have been declared absconder and permanent non bailable warrant of arrest has been issued against them without service of summons, bailable/ non bailable warrant of arrest or processes under Sections 82/83 of the Code.

4. Learned counsel for the petitioners submitted that till date, they have not been served with either the summons or bailable or non bailable warrant of arrest or processes under Sections 82/83 of the Code, but still the Court has jumped to the stage of declaring them absconder and permanent non bailable warrant of arrest has been issued, which is totally impermissible in law.

5. Earlier, by order dated 06.08.2018, the Court had called for a report from the Court below with regard to the present stage of trial as also the copy of the entire ordersheet. The same has been received.



6. Learned APP has gone through the entire ordersheet and has fairly submitted that there has been no service of any processes issued by the Court prior to the petitioners being declared absconder and permanent nonailable warrant of arrest issued against them.

7. Having considered the aforesaid position, the Court finds that a case for interference has been made out.

8. Such passing of orders, which have grave penal consequences for a citizen cannot be passed in such a careless and callous manner. It is the duty of the Court to ensure that before it moves from one stage to the other, with regard to appearance of an accused in a case, it is incumbent for the Court to be satisfied that the orders which are being passed are duly served and executed before the Court moves to the next stage for appearance of the accused. In the present case, as has been verified by learned APP from the copy sent by the Court below of the entire ordersheet, it is apparent that without any service of processes prior to the impugned order, the order declaring the petitioners to be absconder and issuance of permanent nonailable warrant of arrest against them is clearly unsustainable in law and abuse of the process of the Court. Thus, the subsequent order passed by the revisional Court is equally bad in law as it has not correctly



appreciated the factual and legal aspects before rejecting the prayer of the petitioners for setting aside of the original order passed by the concerned Judicial Magistrate, 1st Class dated 24.05.2012, by which the petitioners were declared absconders and permanent non bailable warrant of arrest issued against them.

9. Accordingly, the application is allowed. The order dated 24.05.2012 passed by the Judicial Magistrate 1st Class in Nautan PS Case No. 88 of 1997 (Trial No. 1598 of 2012) as well as the order dated 07.11.2014 passed by the Sessions Judge, West Champaran, Bettiah in Cr. Rev. No. 192 of 2014, are set aside.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	
U	
T	

