

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.348 of 2020

Arising Out of Case No.-426 Year-2009 Thana- PATNA COMPLAINT CASE District- Patna

1. Ashok Kumar Bajoria (Male, aged about 61 years), S/o Late D.P. Bajoria Residing at 1B, 151, 2nd Floor, Sector- 3 Salt Lake, P.S.- Salt Lake, Kolkata-700091 (West Bengal).
2. Jugal Kishore Agarwal (Male- aged about 73 years), S/o Late Mahadeolal Agarwal Residing at New Area, Sikandarpur, P.S.- Sikandarpur, District- Muzaffarpur.
3. Raj Kumar Saraf (Male, aged about 51 years), S/o Shri Gopichand Saraf Residing at C/o Shree Ganesh Stores, Laxmi Narayan Road, P.S.- Sadar Muzaffarpur, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The Union Of India through The Registrar Of Companies, Bihar and Jharkhand, having its office at Maurya Lok Complex, 4th Floor, A- Block, Dakbunglow Road, Patna.
2. The State of Bihar through the Superintendent of Police, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mohit Agarwal, Advocate
For the UOI	:	Mr. Anshay Bahadur Mathur, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 30-06-2020

The matter has been heard *via* video conferencing due to lockdown imposed on account of the COVID-19 pandemic.

2. Heard Mr. Mohit Agarwal, learned counsel for the petitioners and Mr. Anshay Bahadur Mathur, learned counsel for the Union of India.

3. Learned counsel for the petitioners undertakes that by day after tomorrow he would remove such defects which may be cured through e-filing and with regard to the remaining



defects, the same shall be removed within one week from the resumption of normal functioning of the court.

4. The petitioners have moved the Court for the following reliefs:

“i) For quashing of the order dt. 18.03.2011 by which the learned court of Special Judge, Economic Offences, Patna has directed for issuance of non-bailable warrant against the petitioners/accused persons in connection with Complaint Case No. 426 (C) of 2009 without recording satisfaction regarding service of summon and even without issuing a bailable warrant prior to issuance of non-bailable warrant against the petitioners/accused person;

ii) For quashing of the order dt. 10.12.2019 by which the Learned Court of Special Judge, Economic Offences, Patna has passed an order of proclamation u/s 82 of the Code of Criminal procedure in connection with Complaint Case No. 426 (C) of 2009 against the petitioners/accused persons without even satisfaction of execution of Non-Bailable warrant issued vide impugned order dated 18.03.2011;

iii) For restraining the Respondents from giving effect to the order u/s 82 of the Code of Criminal procedure/any coercive action against the petitioners as the Summons fixing the date of appearance of the Petitioners was never served on the Petitioners and even without recording execution of non-bailable warrant;and/or pass such other order(s) as Your



Lordship may deem fit and proper in the facts and circumstances of the present case.”

5. The petitioners are aggrieved by order dated 18.03.2011, by which, without there being any service of summons on them, the Court straightaway directed for issuance of non-bailable warrants of arrest (hereinafter referred to as ‘NBWs’). Thereafter, by order dated 10.12.2012 (wrongly typed as 10.12.2019 in the relief portion/application), by which process has been issued under Section 82 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the ‘Code’).

6. Learned counsel for the petitioners submitted that issuance of NBWs in the face of summons not having been served is totally illegal. Learned counsel submitted that the offence itself is under the Companies Act, 1956 (hereinafter referred to as the ‘Act’) and also compoundable with the permission of the Court, under Section 621A of the Act, and, thus, when the Court itself in order dated 18.03.2011 recorded that summons were not served but still proceeding to issue NBWs, the same is unsustainable. Learned counsel further submitted that the order dated 10.12.2012 also records that service of NBWs has not been received but still the Court has proceeded with issuing the processes under Section 82 of the



Code, which is equally bad in law. Learned counsel submitted that the petitioners were totally unaware of any such complaint having been filed and also of summons being issued and the law requires that only if a person wilfully chooses not to submit before the Court, then, warrants of arrest that too, generally bailable at the first instance, followed by NBWs, and thereafter process under Section 82 of the Code should be issued. It was submitted that the Hon'ble Supreme Court has also held that power to issue NBWs, though available with the Court, should be exercised with proper care after assigning reasons as it relates to curtailment of freedom of a person which is impermissible, except according to procedure established by law, under Article 21 of the Constitution of India. For such proposition, he relied upon the decisions of the Hon'ble Supreme Court in **Raghuvansh Dewanchand v State of Maharashtra [(2012) 9 SCC 791]**, the relevant being at paragraph no. 10 and in **Inder Mohan Goswami v State of Uttaranchal [(2007) 12 SCC 1]**, the relevant being at paragraphs no. 50 to 55. Learned counsel submitted that had summons been duly served, the petitioners would have definitely appeared before the Court and as the case is compoundable with permission of the Court, they would have either contested on merits or prayed for compounding of the



alleged offence. It was further submitted that for no fault the petitioners have been put to harassment and now face even imprisonment.

7. Learned counsel for the Union of India submitted that he would require instructions. However, on a query of the Court with regard to the legal position, where without service of summons, straightaway NBWs have been issued, and thereafter again, without service report relating to the NBWs, process under Section 82 of the Code has been directed to be issued, can be legally justified, both in view of the statutory provisions under the Code as well as the safeguards provided under the Constitution of India, which stands clarified by the Hon'ble Supreme Court, learned counsel fairly submitted that the same cannot be justified in law. Further, he submitted that with regard to the plea of compounding, it is for the Court to consider and pass appropriate orders.

8. At this juncture, learned counsel for the petitioners submitted that they may be permitted to appear before the Court below within a reasonable period and the proceedings may begin from the stage of service of summons and they would cooperate in the matter, and either contest on merits or pray for compounding and the Court may thereafter proceed in the



matter, in accordance with law.

9. Learned counsel for the Union of India submitted that as the purpose is to bring the petitioners before the Court, he would also be amenable to such an order being passed.

10. Having considered the facts and circumstances of the case and submissions of learned counsel representing the parties, the orders dated 18.03.2011 and 10.12.2012, passed in Complaint Case No. 426(C) of 2009 by the Court below are set aside. The petitioners shall appear before the Court below, within three months from today. Upon doing so, the proceeding would continue from the stage of appearance pursuant to issuance of summons. The petitioners shall cooperate in the proceedings and the Court shall expedite the matter as it is already 11 years old.

11. The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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