

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.2502 of 2017

Arising Out of PS. Case No.-1 Year-2016 Thana- PATNA COMPLAINT CASE District-Patna

-
1. Ajay Kumar Gupta, Managing Director, Adroit Financial Services Pvt. 401/402, 4th Floor, Angel Mega Mall, Kaushambi, Ghaziabad, U.P.
 2. Adroit Financial Service Pvt. Ltd. Adroit Financial Services Pvt. Ltd., 401/402, 4th Floor, Angel Mega Mall, Kaushambi, Ghaziabad, U.P. through its Managing Partner, Rajesh Kumar, son of Late Sri Ram Sharan, Adroit Financial Services Pvt. Ltd. 401/402, 4th Floor, Angel Meta Mall, Kaushambi, Ghaziabad, U.P.
 3. Mohit Sharma, Adroit Financial Services Pvt. Ltd. 401/402, 4th floor, Angel Mega Mall, Kaushambi, Ghaziabad, U.P.
 4. Atul Gupta, Adroit Financial Services Pvt. Ltd. 401/402, 4th Floor, Angel Meta Mall, Kaushambi, Ghaziabad, U.P.
 5. Mahesh Chander, Adroit Financial Services Pvt. Ltd. 401/402, 4th Floor, Angel Meta Mall, Kaushambi, Ghaziabad, U.P.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Director General of Police, Bihar, Patna
2. Markendaya Singh, S/o Late Sheo Prasanna Singh, R/o C/24, Vijay Nagar, Road No. 2 (Hanuman Nagar), P.S. Patrakar Nagar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar, Advocate Mr. Mrigank Mauli, Advocate Mr. Abhishek Baid, Advocate Mr. Vinay Mistry, Advocate
For the Res.-State	:	Mr. P.K. Verma AAG-3
For the Res. No.2	:	Mr. Dharmendra Kumar Sinha, Advocate Mr. Atul Kumar Mehta, Advocate Mr. Shushmita Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 09-01-2020

Heard learned counsel for the parties.

2. The petitioners are accused in connection with Complainant Case No. 01(C) of 2016 wherein cognizance has been taken, under Section 20 of the Depositories Act, 1996, by the



learned Special Judge. A petition filed by the petitioners, under Section 205 read with Section 317(1) Cr.P.C., on 31.08.2017 was pending for hearing and by order dated 22.09.2017 the court below without disposing of that petition issued non-bailable warrant of arrest against the petitioners.

3. The petitioners have sought for a writ in the nature of certiorari quashing the impugned order dated 22.09.2019 as violative of the right of fair trial of the petitioners.

4. Contention is that first the prayer should have been disposed of in either way and only thereafter if the petitioners would have been found not appearing in the case, the coercive measure could have been taken.

5. Learned counsel for the private-respondent no. 2 contends that the lower court record would reveal that after cognizance summons issued against the petitioners were already served, hence, the petitioners had knowledge of the case but they were not appearing in the case. Therefore, issuance of bailable warrant of arrest and thereafter non-bailable warrant of arrest to coerce the appearance of the accused, petitioners cannot be faulted as suffering from irregularity or impropriety.

6. There is no dispute that prayer of the petitioners under Section 205 read with Section 317(1) Cr.P.C. vide petition



dated 31.08.2017 was pending before the court below and no order was passed on that petition before issuance of non-bailable warrant of arrest against the petitioners on 22.09.2017. Apparently, the petitioners have been denied right of fairness in trial. Rather the impugned order has been passed in mechanical manner violating the right of the petitioners to be heard before any order affecting the petitioners, is passed.

7. Hence, the impugned order is hereby quashed and the matter is remitted back to the court below to pass order according to law on petition dated 31.08.2017 filed by the petitioners after hearing the parties and then to proceed accordingly,

8. Let the lower court record be remitted back to the court below.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	15.01.2020
Transmission Date	15.01.2020

