

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.251 of 2018

Arising Out of PS. Case No.-65 Year-2011 Thana- LODIPUR District- Bhagalpur

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1. Dhrub Kumar Das @ Dhrub Das son of Late Khachi Das
 2. Chandan Kumar Das @ Chandan Das son of Sri Dhrub Kumar Das
 3. Pawan Kumar @ Pawan Das son of Sri Dhrub Kumar Das
All Resident of Village- Gobardhanpura, P.S.- Lodipur, District- Bhagalpur.
- Petitioners

Versus

The State Of Bihar Respondent

Appearance :

For the Petitioners : Mr.Vivekanand Vivek, Advocate
For the Respondent : Mr. Jharkhandi Upadhayay, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

9 13-02-2020 Heard learned counsel for the petitioners and learned
counsel for the State.

Petitioner in this case is aggrieved by and dissatisfied with the judgment dated 15.01.2018 passed by learned Additional Sessions Judge-V, Bhagalpur in Cr. Appeal No. 156 of 2013.

By the impugned judgment, the learned Additional Sessions Judge-V, Bhagalpur has approved the order dated 04.03.2013 and the order dated 14.05.2013 passed by learned Judicial Magistrate 1st class, Bhagalpur in G.R. Case No. 2367 of 2011 by which he has rejected the show cause of the petitioners and their bail bonds were cancelled under Section 446 of Code of Criminal Procedure, 1973 and non-bailable warrants of arrest were issued against them on 14.05.2013.



It is not in dispute that initially the case in question was registered under Sections 448/341/323/337/504/34 of the Indian Penal Code and the petitioners were granted bail by the learned Chief Judicial Magistrate, Bhagalpur vide order dated 13.09.2011 as the offences were bailable in nature. Later on Section 302 Indian Penal Code was added in the FIR by the investigating officer of the case as the injured informant Surendra Das died during his treatment. In these circumstances, the learned Chief Judicial Magistrate issued show cause notices to the petitioners calling upon them to show cause as to why their bail bonds be not cancelled in the set of allegations constituting the offence under Section 302 of the Indian Penal Code.

The petitioners initially challenged the order issuing show cause by filing a criminal miscellaneous application before this Court giving rise to Cr. Misc. No 424 of 2012 but this Court directed the petitioners to respond to the show cause notice through their counsel and then the Court below was directed to consider the reply of the petitioners within a period of four weeks. The petitioners were allowed to be represented through their learned counsel. Pursuant to said order of this Court, the learned Judicial Magistrate 1st class rejected their



show cause and after taking cognizance of the offences under section 302 IPC as well, he directed for issuance of the non-bailable warrants of arrest.

Learned counsel for the petitioners has repeated the submissions which were made on their behalf in the learned Court below. It is his submission that once the petitioners have been granted bail by the learned Magistrate, only because Section 302 IPC has been added later on, the bail bonds could not have been cancelled. In his submissions, such cancellations of bail bond is, in fact, a recall of the previous order which is not permissible.

On the other hand, Mr. Jharkhandi Upadhyay, learned counsel for the State submits that in the present case, the learned Court below has followed the established procedure of law by issuing a show cause notice to the petitioners and only after considering the stand of the petitioners, the bail bonds have been cancelled and the petitioners have been called upon to appear.

It is submitted that the learned Court below has dealt in detail the judicial pronouncements on which the parties relied upon. The learned Magistrate has found that the facts of this case and the circumstances under which the bail bonds have



been cancelled are similar to the facts of the case of **Hamida Vs. Rashid** reported in **2008 (1) SCC 474** and judgment of the Apex Court in the **Prahlad Singh Bhati Vs. NCT. Delhi** reported in **2001(4) SCC 280**. Before this Court, learned counsel for the petitioner has not brought any judicial pronouncements to demonstrate that the principles which have been laid down by the Honourable Supreme Court in the Case of **Hamida** (Supra) and **Prahalad Singh Bhati** (Supra) have gone a change.

Having heard learned counsel for the petitioners and the State and upon perusal of the materials available on the record, this Court finds that both the learned Court below have rightly taken a view that these petitioners should appear pursuant to cancellation of their bail bonds and the cancellation has got necessitated only because earlier the petitioners were granted bail in a case registered under the bailable provisions whereas later on Section 302 IPC has been added and thereafter the petitioners did not surrender and apply for bail for newly added cognizable and non-bailable offence.

This Court finds that the Court below has followed the procedures, opportunity to defend has been given to the petitioners and only after discussing the case laws on the subject



the impugned judgment has been passed. This Court, therefore, finds no error with the impugned judgment as nothing has been brought to the notice of this Court to demonstrate that the views expressed by the Hon’ble Supreme Court in the case on which reliance has been placed by the Court below have gone for a change.

This application has, thus, no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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