

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2798 of 2022**

Arising Out of PS. Case No.-90 Year-2010 Thana- GAYA COMPLAINT CASE District-
Gaya

=====

SUMEET SINGH KALSI @ NAUJEET SINGH KALSI @ SUNNIT KALSI
S/o Late Jasbir Singh Kalsi R/o Springdales, Kilburn Colony, Hinoo, P.S.-
Doranda, District- Ranchi, Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ghulam Hasnain Khan

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr.Jitendra Singh, Senior Advocate
		Mr. Yash Singh, Advocate
		Mr. Tej Pratap Singh, Advocate
For the Opposite Party/s :		Mr. Jitendra Kumar Singh, APP

=====

**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
C.A.V. ORDER**

Date : 23-02-2023

Heard Mr. Jitendra Singh, learned Senior
Counsel for the petitioner and Mr. Jitendra Kumar Singh, learned
APP for the State.

2. The petition has been filed for quashing of
the order dated 25.08.2016/26.08.2016 passed in Complaint
Case No. 90(C)/2010 whereunder the learned Sub Divisional
Judicial Magistrate, Sherghati has been pleased to pass orders
under Section 82 and 83 of the Code of Criminal Procedure,



1973.

3. The prosecution story read as follows:-

(i) the Complainant preferred Complaint Case No. 90(C)/2010 on 26.02.2010 for offences u/s 147, 148, 447, 504, 427, 379/149, 504 and 323 of the Indian Penal Code against five accused persons namely, Ajay Kumar, Arvind Kumar, Naujit Singh Kalsi @ Summit Kalsi, Roshan Kumar Singh, Neyamat Mian;

(ii) the allegation is/are the complainant and Sahina Khatoon are legal owners of Cadastral Survey Plot No. 430, 434, 435, 436 and 466 situated at village Jamuna, Anchal and P.S. Imamaganj, District- Gaya, from which new plot No. 541, 642, 54 and 603 respectively have been carved out;

(iii) the complainant had constructed 6 shops along with a verandah, store room and kitchen. One shop was let out to Smt. Munni Bibi for her tailoring business;

(iv) the complainant's land was at the nearest range of the bridge being constructed on



the river Sorhar. Accused petitioner Naujit Singh Kalsi approached the complainant and took 2 rooms on rent for Rs. 2500/- per month;

(v) On 15.03.2019, the complainant's younger brother informed him that accused Naujit Singh Kalsi, his clerk and other persons being the staffs of the said contractor are destroying the crops on his plots, despite requests not to do so, for which a '*Sanha*' was lodged in Imamganj Police Station for necessary action. After lodging of '*Sanha*', the petitioner and the accused Roshan Kumar apologized and offered to pay Rs. 20,000/- as compensation;

(vi) however, the above accuseds refused to pay the compensation. The complainant on 23.07.2009 went to the spot and saw the lifting of soil by tractors from his land.

(vii) the accused petitioner and Roshan Kumar on being questioned, accepted their fault and again offered to compensate the complainant. The Complainant brought the same to the notice of S.S.P., Gaya vide petition dated



23.07.2009;

(viii) the complainant's brother further informed the complainant of other illegal acts on the land of the complainant. He again went on the spot and asked the petitioner and the accused Roshan Kumar whereafter he was informed that it was for the construction of "Link Road";

(ix) the complainant then asked the accused to stop the work. However, the accused persons with the help of local police continued and threatened the complainant with dire consequences. Complainant was thus compelled to file Title Suit No. 446 of 2009 before the Court of the learned Sub-Judge-I, Gaya for appropriate reliefs which is still pending;

(x) on 17.02.2010, at about 6 AM, the complainant learnt that the accused is forming an unlawful assembly on the spot and were also causing damage to his shops;

(xi) he accordingly requested the accused persons to stop but to no avail. One of the accused stopped the complainant, while the other



accused persons removed the articles from the shop of Munni Begum and the aforementioned act were seen by the persons who had assembled on the spot;

(xii) the accused persons thus committed illegal acts, insulted the complainant and caused wrongful loss Rupees 1 Lakh by damaging his shop and removing articles from there. Further, they also caused loss of Rs. 50,000/- to Munni Begum by removing the articles;

(xiii) although the complainant approached the local police, no action was taken. Left with no alternative, the complaint was filed.

4. Learned Senior Counsel for the petitioner submits that the offences under which cognizance were taken was/were under Section 147, 427, 323 and 504, all of which are bailable in nature. Accordingly, he moved for surrender cum bail before the learned S.D.J.M., Sherghati which was allowed on 26.07.2013.

5. The further submission is that a perusal of the order sheet would show that earlier he was diligently



appearing before the Trial Court. However, on 25.08.2016/26.08.2016 although accused, Neyamat Ansari was present as the proceedings was stayed by the High Court against two accused persons, namely Ajay Kumar and Arvind Kumar and since rest of the accused persons were absent, the Trial Court issued processes under Section 82 and 83 of the Cr.P.C. against the accused persons including the petitioner.

6. The contention of the learned Senior Counsel is that prior to that, non-bailable warrant was not issued and the procedure for issuance of processes under Section 82 and 83 of the Cr.P.C. was/were not followed.

7. Further, in view of the fact that he was already on bail, the same was not cancelled before the issuance of proclamation.

8. Learned Senior Counsel submits that there was no material and/or reason for the learned Court to take such a drastic decision as he was not declared an absconder and in the aforesaid background, he submits that the order in question is fit to be set aside.

9. Learned Senior Counsel cited a decision by a bench of this Court in **Nirmaljit Singh Narula @ Nirmal Baba Vs. The State of Bihar through the Director General of**



Police, Bihar & Ors. reported in **(2014) 1 PLJR 51** in which amongst other the prayer was to set aside the warrant of arrest dated 18.05.2012 issued by the learned Chief Judicial Magistrate, Araria on the ground that the FIR does not disclose any cognizable offence which demands arrest to follow and the law does not obligates the police to arrest simply because a cognizance offence has been alleged.

10. In the said case, the learned co-ordinate bench took note of Section 73 and 78 of the Cr.P.C. which read as follows :-

73. Warrant may be directed to any person -(1) The Chief Judicial Magistrate or a Magistrate of the First Class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.

2. Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under the charge.

3. When the person against whom such warrant is issued is



arrested, he shall be made over within the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under Section 71.

78. Warrant forwarded for execution outside jurisdiction – (1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate 'or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is' to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided.

2. The Court issuing a warrant under sub-section (1) shall forward, alongwith the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under Section 81 to decide whether bail should or should not be granted to the person.”



11. He next relied on another order of Patna High Court in the case of **Jitendra Singh & Ors. Vs. State of Bihar, through the Director General of Police & Others.** reported in **(2020) 1 PLJR 945**. In that case also, the petitioner wanted quashing of the order of the learned 6th Additional Sessions -cum- Special Judge, Excise Saran by which warrant of arrest order followed by proclamation order were issued and the learned Court in paragraph nos. 11, 12 and 13 held as follows :-

11. So far as the submission that no reason has been shown in the order dated 29.03.2019 is concerned, again this Court is of the opinion that the reasons are apparent on the face of the record, learned counsel for the petitioners has admitted in course of hearing that as on 29.03.2019 the petitioners had not filed any anticipatory bail application and if this was the position and the Investigating Officer informed the learned Court below that the petitioners were evading the arrest and on being satisfied the learned Court has passed the impugned order, no separate reason is required to be found in the order dated 29.03.2019.

12. So far as the order dated 07.01.2020 issuing process under Section 82 Cr.P.C. is concerned, this Court



is in agreement with the submission of learned counsel for the petitioners that Section 82 Cr.P.C. may be triggered only when the court has reasons to believe that the accused persons are absconding and have concealed themselves so that the warrant cannot be executed against them. Such reasons are to be based on subjective satisfaction of the learned Court and it would be required to be shown from the order passed by the court below that the Court had upon perusal of the materials placed before the court reasons to believe that the accused were absconding. The order dated 07.01.2020 does not show any reason in terms of Section 82 Cr.P.C.. This being the position, this Court set-aside the order dated 07.01.2020 by which process under Section 82 Cr.P.C. has been issued against the petitioners.

13. So far as the order issuing warrant of arrest is concerned, no interference is made and it will be open for the Investigating Officer to execute either the said warrant of arrest or to seek a fresh warrant of arrest and proceed further, as the case may be, in accordance with law.”

12. Lastly, learned Senior Counsel relied on a



order of this Court in the case of **Kamini Singh Vs. State of Bihar and Another** reported in **2019 SCC Online Pat 2040**. In that case, the petitioners moved for quashing of the order on the ground that the Investigating Agency and the Court have shown extreme haste in procuring/granting such process within a short span of one week.

13. Per contra, Mr. Jitendra Kumar Singh, learned APP for the State submits that the order of the learned Sub-Divisional Judicial Magistrate, Sherghati was passed on 25.08.2016/26.08.2016, the petitioner chose to challenge the same in the year, 2022, six years later. He as such, submits that on the ground of inordinate delay itself, the present case is fit to be dismissed.

14. It is his further submission that the order sheet is on record from which it can be seen that all through the pendency of the case and prior to the order dated 25.08.2016/26.08.2016, the petitioner absented himself inasmuch as the order shows that the representation was made on the few dates through the lawyer.

15. Further, after the order in question on 25.08.2016/26.08.2016 was passed, he continuously absented himself. He has taken this Court to the order dated 10.03.2016,



12.05.2016, 25.08.2016/26.08.2016, 23.11.2016, 12.01.2017, 10.04.2017, 07.06.2017 and 23.08.2017 in support of his submission. He submits that it was only Neyamat Ansari who was filing his '*Hazri*' and none of the accused persons presented themselves. He as such, submits that even the conduct of the petitioner does not warrant interference.

16. Having gone through the rival submissions put forward by the respective parties, in the considered opinion of this Court:

(i) admittedly, the order was passed on 25.08.2016/26.08.2016;

(ii) the petitioner neither challenged the said order for next six years nor appeared before the concerned Court;

(iii) after the passing of the said order on 25.08.2016/26.08.2016 and even prior to that on 10.03.2016 as also on 12.05.2016 till the last page of order sheet which is 09.03.2020, the learned Court has recorded about the absence of the accused persons including the petitioner herein;

(iv) considering the fact that order by the learned Sub Divisional Judicial



Magistrate, Sherghati was passed on 25.08.2016/26.08.2016 which was not challenged by the petitioner uptill 2022 and further, in absence of any petition and/or interim protection granted to him, he was duty bound to comply the aforesaid order but instead chose to defy the same.

(v) in that background, the contention of the learned APP that the petition is fit to be dismissed cannot be overlooked.

17. So far as decisions aforesaid cited by the learned Senior Counsel is/are concerned, each and every case has to be considered in the particular facts and circumstances. Here the admitted fact is that the said order dated 25.08.2016/26.08.2016 was not challenged for six years. Further in absence of any challenge, the petitioner chose not to appear before the concerned Court.

18. Further, perusal of the order sheet shows that the petitioner was not appearing before the Court even prior to the date of the order and in that background, the order dated 25.08.2016/26.08.2016 was passed by learned Sub Divisional Judicial Magistrate Sherghati. The petitioner could have preferred the present petition immediately thereafter in 2016



itself which was not done. In its absence, he was duty bound to appear before the concerned Court. He failed in both.

19. In the aforesaid circumstances, this is not a fit case in which any interference can be made.

20. The petition is without merit and is dismissed.

(Rajiv Roy, J)

Jagdish/Neha/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	24.02.2023
Transmission Date	

