

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57101 of 2019**

Arising Out of PS. Case No.-849 Year-2016 Thana- NALANDA COMPLAINT CASE
District- Nalanda

1. SACHIDA NAND MISHRA Son of Sri Pradhumna Mishra
 2. Ravindra Kumar Son of Late Lalta Prasad
 3. Kautilya son of Ramjee Ojha. All are residents of Mahindra & Mahindra, Orchid Mall, Boring Road, P.S.- Srikrishna Puri, District- Patna.
- Petitioner/s

Versus

1. The State of Bihar
 2. Ranjeet Kumar Singh Son of Sri Triveni Singh, Proprietor M/s T.K. Engineering Works, Near Sipah More, Patna Ranchi Bypass, P.S. Deepnagar, District- Nalanda.
- Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Chittranjan Sinha, Senior Advocate
Mr. Rajesh Ranjan, Advocate
For the Opposite Party/s : Mr. Shyam Kumar Singh, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 23-09-2019**

Heard learned counsel for the parties.

2. By the impugned order dated 28.06.2019 passed in Complaint Case No.849C of 2016, the learned court below has rejected the prayer of the petitioner for dispensation with personal appearance and for allowing appearance through lawyer in exercise of power under Section 205 of the Code of Criminal Procedure. It appears that cognizance in the case was taken for the offence under Section 406 of the Indian Penal Code.



3. The impugned order reveals that the prayer has been refused only for the reason that process of non-bailable warrant of arrest has already been issued against the petitioners. Hence, application under Section 205 of the Code of Criminal Procedure was not maintainable.

4. Learned counsel for the petitioners submits that no process was ever served on the petitioners, nor the impugned order reveals that the summons issued in the case on 25.10.2016 was ever served on the petitioners. Without any proof of service of summons, warrant of arrest has been issued, which is itself an improper order. Moreover, issuance of non-bailable warrant of arrest is no bar for consideration of prayer under Section 205 of the Code of Criminal Procedure. Learned counsel contends that this Court has time without number held that the provision of Section 205 of the Code of Criminal Procedure is "*for some purpose and not for fun*". The Magistrate is always competent to ask the personal appearance of the accused, whose prayer under Section 205 of the Code of Criminal Procedure has been allowed. Petitioners were/are employees of Mahindra & Mahindra Limited. One of the petitioner has already left the job and other petitioners are always busy on tour to different and distant places



in connection with their work. Petitioners are ready to appear as and when required by the court to facilitate progress of the trial.

5. In *Ram Harsh Das versus the State of Bihar*, reported in *1998 (1) PLJR 502*, a Division Bench of this Court observed that when a warrant of arrest has been issued at the first instance against the accused, application under Section 205 of the Code of Criminal Procedure would not be maintainable, as the exercise under Section 205 of the Code of Criminal Procedure is only in the case where summons have been issued.

6. In the present case, summons was issued against the petitioners initially and there was no service report of summons on the record when the court below issued a bailable warrant of arrest and likewise, there was no service report of bailable warrant of arrest when the court below issued non-bailable warrant of arrest. Therefore, the aforesaid reason of the court below that non-bailable warrant of arrest has been issued is not applicable in the facts and circumstances of the case. Hence, for substantial justice, the impugned order is *set aside* and the matter is remitted back to the court below to pass necessary order according to law. It is needless to say that the Magistrate has always power to ask the accused to appear on any date fixed, when for progress of the trial it is necessary. This power can be



exercised even after allowing application under Section 205 of the Code of Criminal Procedure.

7. Accordingly, this application is *allowed*.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
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