

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.25228 of 2015**

Arising Out of PS.Case No. -145 Year- 2010 Thana -SAMASTIPUR COMPLAINT CASE District-SAMASTIPUR

Swarnlata Francis wrongly named in the complaint as Swarnlata Francisi, the then Block Supply Officer, Dalsingsarai, District-Samastipur, wife of Parmanand, resident of Holding No.248, Ward No.4, Samanto Kali Manda, Town and P.S.-Jhumri Telaiya, District-Kodarma (Jharkhand).

.... .... Petitioner.

Versus

1. The State of Bihar.
2. Dhaneshwar Das, son of Late Dina Das, resident of village-Chakwahuddin, P.S.-Dalsingsarai, District-Samastipur.

.... .... Opposite Parties.

**Appearance :**

For the Petitioner : Mr. Abhay Shankar Singh, Adv.


For the Opposite Parties : Mr. M.Rab APP

**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**

**ORAL ORDER**

02 28-05-2015 The present application has been filed for quashing the order dated 22.04.2015 passed by Sri K.K. Chaudhary, learned Judicial Magistrate 1<sup>st</sup>Class, Dalsingsarai, District-Samastipur whereby the petitioner's bail bond has been cancelled and non-bailable warrants have been directed to be issued in relation to Complaint Case No.145 of 2010 (T.R. No.142/2015) instituted for the offence under Sections-323 and 504 of the Indian Penal Code.

It appears that pursuant to cognizance having been



taken, in course of trial, petitioner and other accused persons were appearing in the case for over two years. The trial proceeded. The petitioner and other accused persons were examined under Section-313 Cr.P.C. Thereafter, the prosecution then filed further application for examination of further witnesses. Strangely enough, once the matter was already concluded and fixed for hearing, the witnesses already been examined under Section-313 Cr.P.C., the Trial Court allowed the application of the prosecution for further evidence. At this stage, having filed appearance all along, an application was filed by the petitioner under Section-317 Cr.P.C. for exemption to appear before the Trial Court. There were other accused persons present in the Court. Notwithstanding the aforesaid, the Trial Court rejected the application of the petitioner filed under Section-317 Cr.P.C. and issued non-bailable warrants.

In the facts and circumstances as noted above, this Court is firmly of the view that the manner in which the Magistrate acted was wholly uncalled for. The trial was not being hampered in any way by exempting the petitioner from appearing on the date fixed. Let it be noted that appearance, for the sake of appearance, should not be insisted. Appearance on every date is harassment to the accused but necessary under the circumstances. If exemption is

sought for, it cannot be rejected whimsically. It is a question of personal liberty. The petitioner is a Government servant and posted at another station.

Considering the aforesaid, the order of the learned Magistrate dated 22.04.2015 is set aside. The petitioner would continue on bail bond as already furnished.

This application is, accordingly, allowed.

**(Navaniti Prasad Singh, J.)**

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