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**(2012) 01 JH CK 0080**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (Cr.) No. 161 of 2010**

Shaukat Ali Khan and Others

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

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**Date of Decision :** 25-01-2012

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 317

**Citation :** (2012) 01 JH CK 0080

**Hon'ble Judges :** P.P. Bhatt, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

P.P. Bhatt

1. Heard Mr. A. K. Kashyap, learned senior counsel as well as Mr. Awanish Shekhar learned counsel appearing for the petitioners as also learned counsel appearing for the State.

2. Perused the papers.

3. The present petition is filed, being aggrieved and dissatisfied with the order, passed by the learned Judicial Magistrate, 01st Class, Garhwa in Complaint Case No. 707 of 2003 and also the order dated 03.02.2010, passed by the learned Sessions Judge, Garhwa in Cr. Revision No. 2 of 2010.

4. The learned counsel for the petitioners submitted that on 04.11.2009, petitioners could not remain present before the court below and therefore, they submitted exemption application but out of six accused, one accused remained present and filed his attendance and therefore, the court below accepted his attendance and rejected the request for grant of exemption qua the other accused and also passed an order with regard to cancellation of bail bonds and issued non-bailable warrant of arrest and also issued show-cause notice to the bailers. The learned counsel for the petitioners further submitted that the learned

Magistrate while rejecting the representation u/s 317 of the Code of Criminal Procedure, cannot, at the same time, cancel the bail bond and issue non-bailable warrant of arrest, if on the preceding date, it has not clearly directed that personal attendance required u/s 317 of the Cr.P.C., had no longer dispensed with, but here in the present case, the learned trial court has passed the composite order in violation of the provisions of Section 317 of the Code of Criminal Procedure. It is further submitted that this was the first incident when the accused persons could not remain present. However, they submitted their exemption application well in time but merely because one accused out of six remained present, the court below accepted his attendance and rejected the exemption application and cancelled the bail bonds and issued non-bailable warrants of arrest and also issued show cause notice to the bailers. Therefore, it is submitted that the order passed by the learned Magistrate is very harsh and also against the principle of law. It is further submitted that the petitioners are ready and willing to co-operate in the trial and shall remain present before the court below as and when required by the court below and will abide by the conditions that may be imposed while granting bail and therefore, they may be allowed to continue on the same bail bond. In support of his contentions, the learned counsel for the petitioners has referred to and relied upon the judgment rendered in the case of Tijan Musahar @ Jitan Musahar-versus-The State of Bihar & Others reported in 2011 (3) P.L.J.R. 286.

5. Learned counsel for the State submitted that since the petitioners did not remain present before the court below on the date so fixed and therefore appropriate order was passed by the court to secure the presence of the petitioners accused persons. It is submitted that out of six accused persons, despite filing of exemption application, one accused remained present and submitted his attendance, therefore, the court below thought it fit to cancel the bail bond of other five accused. It is further submitted that no illegality has been committed by the court below while passing such order and the purpose of passing of such order is to secure the presence of the accused persons at the time of trial, so that trial can proceed further and the purpose of granting bail may not be frustrated.

6. Considering the aforesaid rival submissions and also on perusal of the papers, it transpires that the present petition is filed being aggrieved and dissatisfied with the order, passed by the learned Judicial Magistrate, 01st Class, Garhwa in Complaint Case No. 707 of 2003 and also the order dated 03.02.2010, passed by the learned Sessions Judge, Garhwa in Cr. Revision No. 2 of 2010. I found substance in the arguments advanced by the learned counsel for the petitioners that the learned Magistrate while rejecting the representation u/s 317 of the Code of Criminal Procedure, cannot, at the same time, cancel the bail bonds and issue non-bailable warrant of arrest, if on the preceding date, it has not clearly directed that personal attendance required u/s 317 of the Code of Criminal Procedure, had no longer dispensed with but here in this case, has passed the composite order, which is in contravention of the provisions contained in Section

317 of the Code of Criminal Procedure. Therefore, having regard to the facts and circumstances of the present case and more particularly, in view of the fact that on earlier occasions, all the petitioners have remained present before the court below and as submitted by the learned counsel for the petitioners, the petitioners are ready and willing to cooperate in the trial and shall remain present as and when required by the court below during the course of trial and also in view of ratio laid down in the judgment rendered in the case of Tijan Musahar @ Jitan Musahar-versus-The State of Bihar & Others reported in 2011 (3) P.L.J.R. 286, cited by the counsel for the petitioners, which is helpful to the case of the petitioners, the order passed by the learned Judicial Magistrate, 01st Class, Garhwa in Complaint Case No. 707 of 2003 and also the order dated 03.02.2010, passed by the learned Sessions Judge, Garhwa in Cr. Revision No. 2 of 2010 are required to be quashed and set aside. Under the circumstances, it is desirable to direct the petitioners to remain present before the court below on 06th of February, 2012.

7. Accordingly, the order passed by the learned Judicial Magistrate, 01st Class, Garhwa in Complaint Case No. 707 of 2003 and also the order dated 03.02.2010, passed by the learned Sessions Judge, Garhwa in Cr. Revision No. 2 of 2010 are quashed and the petitioners are directed to remain present before the court below on 06th of February, 2012 and thereafter, shall co-operate in the trial and shall remain present before the court below as and when their presence is required by the court below. It is further clarified that petitioners may be allowed to continue on the same bail bonds.

8. With the aforesaid observations and directions, this writ petition stands disposed of.