

# SUPREME COURT OF INDIA

Dhananjay Kumar Pandey

Vs.

State of Bihar

(G. B. Pattanaik and U. C. Banerjee JJ.)

11.02.2000

## ORDER

1. Leave granted.

2. The short question that arises for consideration in this appeal is whether the magistrate was justified in dismissing the application of the present appellants for release of the property which was seized in connection with a case against the father of the appellants on the ground that the accused Haridwar Pandey is absconding. The order of the magistrate D/- 17-2-1999 on the application filed by the appellants clearly indicates that the Magistrate refused to consider the application on merits as the accused is found to be absconding. Against the said order the appellants had moved the High Court but the High Court by the impugned Order D/- 10-5-1999 dismissed the writ application. Therefore, the appellants have approached this Court. It may be stated that the appellants earlier had moved the High Court in Criminal Writ Jurisdiction No. 771/98 against the order of the learned Special Judge and the High Court in the said case had directed the Special Judge to pass final order on the application on merits. The appellant Dhananjay Kumar Pandey appearing in person submits that the order rejecting the application for release of property is on an incorrect premise inasmuch as the accused Haridwar Pandey was never absconding and has been admitted into the All India Institute of Medical Sciences (AIIMS), New Delhi and this fact had been made known to the Court itself. From several proceedings pending in this Court we have also been informed by accused Haridwar Pandey that he is ill and is getting treatment in AIIMS. In this view of the matter the Magistrate was not justified in rejecting the application for release of the property on the sole ground that accused Haridwar Pandey is absconding. The High Court also failed to exercise its

jurisdiction vested in law in not correcting the said error and dismissing the writ petition filed. In the aforesaid premises we quash the order of the High Court D/-10-5-1999 as well as that of the Magistrate D/- 17-2-1999 and we direct the Magistrate concerned to consider the application filed by the appellants for release of property on merits. Needless to mention the concerned Magistrate must exercise his discretion applying his own mind as to the merits of the application for release of the property.