

Birendra Kumar Singh Vs. State of Bihar

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Court : Patna

Decided On : May-10-2000

Judge : P.K. Sinha, J.

Appeal No. : Crl. Misc. No. 10211 of 1996

Appellant : Birendra Kumar Singh

Respondent : State of Bihar

Disposition : Appeal Allowed

Judgement :

P.K. Sinha, J.

1. Petitioner Birendra Kumar Singh, an accused in M.V. Suit No. 85 of 1993 corresponding to Tr. No. 626 of 1993, pending in the Court of Judicial Magistrate, 1st Class, Aurangabad, has filed this application under Section 482 of the Code of Criminal Procedure praying therein to quash the order dated 30.1.1996 recorded by the learned lower Court whereby and whereunder the petitioner had been declared absconder and a permanent warrant of arrest had been issued against him in a case in which cognizance of offence was taken under Sections 192 and 177 of the Motor Vehicles Act.

2. The submission of the learned Counsel in short is that the petitioner was not even aware that his presence was required in the case to face trial so much so that neither any summons or notice was served upon him nor he was aware of issuance of any warrant of arrest, bailable or non-bailable, which in any case, had not been executed against him.

3. From perusal of lower Court record that has been received, it will appear that by order dated 4.10.1993, the learned Judicial Magistrate ordered for issuance of summonses which ultimately was complied by the office on 30.1.1994. Thereafter, the learned Magistrate, having waited for some time for receipt of the execution report, ordered on 14.7.1994 for issuance of bailable warrant of arrest against the petitioner which appears to have been sent by the office on 13.9.1994. Learned lower Court, thereafter, waited for long time for execution of the warrant but not having been received that report ordered on 8.11.1998 for issuance of non-bailable warrant of arrest against the petitioner which appears to have been sent by the office on 13.9.1994. Learned lower court, therefore, waited for long time for execution of the warrant but not having been received that a report (sic) 8.11.1886 for issuance of non-bailable warrant of arrest as well processes under Sections 82 and 83 of the Code of Criminal Procedure which again was issued on 15.11.1995. After futile wait for receipt of execution report, the learned Magistrate vide order dated 30.1.1996 observed that neither the accused had appeared, nor brought before the Court by the police under arrest, and since there was no prospect of his appearance in near future, the petitioner was declared absconder and issuance of permanent warrant of arrest, non-bailable, against the petitioner was ordered.

4. This order ostensibly has been recorded under Section 2915 of the Code of Criminal Procedure under which in absence of the accused, if it is proved that the accused has absconded and there is no immediate prospect of arresting him, the Court may examine the witnesses produced on behalf of the prosecution and record their deposition in absence of that accused, which subsequently could be used in evidence against the accused, on his arrest under certain circumstances.

5. Obviously in this case the bailable warrant of arrest was issued by the learned lower Court without receipt of service report of the summons and, subsequently,

non-bailable warrant of arrest and processes under Sections 82 and 83 of the Code were ordered to be issued without the report of the execution of the bailable warrant of arrest and, lastly, the impugned order was passed without there being anything on record that the petitioner was aware of the pendency of the case against him in any manner. Obviously, the impugned order cannot be sustained. It, under the circumstances, cannot be said that it had been proved that petitioner had absconded.

6. From perusal of the records, it appears that even after recording of the impugned order, a Counsel had appeared on behalf of the petitioner on 23.4.1996 and a petition was filed on 3.6.1996 to allow the petitioner to confess his guilt through his lawyer which prayer, however, was rejected by the learned Magistrate, directing that accused should appear personally and then, he might make a confession.

7. Learned Counsel submits that a reasonable time might be fixed for appearance of the petitioner in the lower Court so that the petitioner could appear as he never wanted to avoid to the proceedings of the Court.

8. Learned Counsel for the State, Shri S.K.P. Sinha, also agreed that in view of the facts available on record, the impugned order could not be sustained.

9. This application, therefore, is allowed and the impugned order dated 30.1.1996 is hereby quashed.

10. In the facts and circumstances of the case, the warrant of arrest and processes under Sections 82 and 83 of the Code be recalled and not be given effect to by the learned lower Court for a period of two months from the date of the receipt of this order within which period the petitioner would appear in the Court and make his plea. On his appearance, the proceeding shall continue in accordance with law.