

Tarkeshwar Singh Vs. the State of Bihar

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Court : Patna

Decided On : Dec-11-2006

Judge : Ghanshyam Prasad, J.

Appellant : Tarkeshwar Singh

Respondent : The State of Bihar

Judgement :

Ghanshyam Prasad, J.

1. Heard.

2. This petition under Section 482 Cr.P.C. has been filed to quash the order dated 28.8.2006 passed by C.J.M., Saran at Chhapra in Baniapur P.S. Case No. 36 of 2006 as well as its revisional order dated 27.9.2006 passed by Sessions Judge, Chhapra in Cr. Revision No. 196 of 2006 The learned C.J.M. vide impugned order, on requisition of police has issued warrant of arrest against the petitioner.

3. It appears from the record that the petitioner is one of the named accused in Baniapur P.S. Case No. 36 of 2006 instituted on 6.3.2006 on the basis of fardbeyan lodged by one Ritesh Singh. The I.O. of the case on 28.8.2006 filed a requisition (Annexure-2) before the court of C.J.M. for issue of warrant against the petitioner on the ground that he is named accused and is evading his arrest. On the said requisition of the police, the learned C.J.M. through impugned order

directed for issue of warrant against the petitioner. The petitioner instead of surrendering before the court below preferred revision against the said order before the court of Sessions Judge, which was reject vide order dated 27.9.2006

4. The main contention of the learned counsel for the petitioner is that he learned C.J.M. has issued warrant of arrest against the petitioner in violation of Section 73 of the Cr.P.C. The Magistrate has no power to issue warrant of arrest against accused to compel him to appear before the police simply for aid of investigation. In support of his contention, the learned counsel has relied upon a decision of the apex court reported in (1997 Supreme Court 2494 State v. Daud Ibrahim Kesar and 2005(3) PLJR 747 Krishna Murari Yadv v. State of Bihar).

5. Section 73 of the Cr.P.C. runs as follows.-

73. Warrant may be directed to any person.-(1) The Chief Judicial Magistrate of a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in or enters on, any land or other property under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under Section 71.

6. On plain reading of the section, it is quite clear that the provision of Section 73 has general application and even in course of the investigation the C.J.M. or Magistrate 1st Class can issue warrant of arrest to apprehend a person who is an accused of a non-bailable offence and is evading his arrest.

7. The apex court in above decision (Supra) has considered the scope of Section 73 of the Act and ultimately, in paragraph-23, it has been held as follows:

23. Now that we have found that Section 73 of the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia a person who is accused of a non-bailable offence and is evading arrest we need answer the related question as to whether such issuance of warrant can be for his production before the police in aid of investigation. It cannot be gainsaid that a Magistrate plays, not infrequently, a role during investigation, in that on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen handwritings etc. However in performing such or similar functions the Magistrate does not exercise judicial discretion like while dealing with an accused of a non-bailable offence who is produced before him pursuant to a warrant of arrest issued under Section 73. On such production, the Court may either release him on bail under Section 439 or authorise his detention in custody (either police or judicial) under Section 167 of the Code. Whether the Magistrate, on being moved by the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with Section 167(3) of the Code. Since warrant is and can be issued for appearance before the Court only and not before the police and since authorisation for detention in police custody is neither to be given as a matter of course nor on the mere asking of the police, but only after exercise of judicial discretion based on materials placed before him, Mr. Desai was not absolutely right in his submission that warrant of arrest under Section 73 of the Code could be issued by the Courts solely for the production of the accused before the police in aid of investigation.

8. From the above decision of the apex court, it is quite clear that the Section 73 has general application and in course of investigation, the Magistrate has ample power to issue warrant of arrest against the person who is accused of a non-bailable offence.

9. On perusal of the impugned order of the learned C.J.M. coupled with Annexure-2, it is quite clear that the submission by apprehension of the learned counsel for the petitioner is unfounded and baseless. Neither the requisition of the Police (Annexure-2) nor the order in question goes to show that the purpose of warrant of

arrest is for production before the police in aid of investigation. Apart from it, in section itself, there is provision to check such circumstances. Sub-section (3) of Section 73 Cr.P.C. clearly provides that after arrest on the strength of warrant of arrest issued under Sub-clause (1) the person must be produced before the Magistrate having jurisdiction in the case. Thereafter, Section 167 Cr.P.C. comes to play is role for detention of the accused.

10. So far applicability of the other decision cited by the learned counsel for the petitioner is concerned in the facts and circumstances of the case, it is no application in this case. The learned Sessions Judge in its revision order has rightly distinguished it.

11. Thus, having regard to the facts and circumstances of the case, I find no merit in this application. Accordingly the same is hereby rejected.

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