

Mansur Ali and Anr Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Nov-17-2014

Appellant : Mansur Ali and Anr

Respondent : State and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
ORDER

S.B. CRIMINAL MISC. PETITION NO.2806/2014 Mansur Ali & Anr. Vs. State of Rajasthan & Anr. Date of order :

17. 11.2014 PRESENT HON'BLE MR. JUSTICE VIJAY BISHNOI Mr. Pradeep Shah for petitioners. Mr. Vikram Singh, Public Prosecutor. BY THE COURT:- This criminal misc. petition under Section 482 Cr.P.C. has been preferred by the petitioners while challenging the order dated 31.10.2014 passed by learned Additional Sessions Judge, Women Atrocities Cases, Udaipur (hereinafter referred to as 'the revisional court') in revision petition preferred on behalf of the petitioners against the order dated 5.8.2013 whereby the Judicial Magistrate No.1, Udaipur City (North), Udaipur (hereinafter referred to as 'the trial court') has took cognizance against the petitioners for the offences punishable under Sections 420, 406, 467, 468, 471 and 120-B I.P.C. while rejecting the final report filed by the police vide FR No.43/2012 after investigating the allegations levelled in FIR

No.74/2014 of Police Station 2 Dhanmandi, District Udaipur. The learned trial court while rejecting the above mentioned final report has accepted the protest petition filed by the complainant. The learned trial court after thoroughly discussing the material available on record took cognizance against the petitioners for the aforesaid offences. The learned revisional court also affirmed the order passed by the trial court. After taking cognizance, the learned trial court summoned the petitioners through warrant of arrest and said directions have also not been interfered by the revisional court. After arguing for some time, learned counsel for the petitioners submits that he does not want to press this petition challenging the action of the trial court of taking cognizance against the petitioners for the offences punishable under Sections 420, 406, 467, 468, 471 and 120B I.P.C., however, contended that the action of the trial court of summoning the petitioners through warrant of arrest is unwarranted. It is contended that in a case where the police has filed a negative final report and after rejecting the same, if the trial court takes cognizance, normally the 3 accused persons should be summoned through bailable warrant. Learned counsel for the petitioners has placed reliance upon the judgment of the Hon'ble Apex Court in case of Inder Mohan Goswami & anr. Vs. State of Uttaranchal & Ors. reported in (2007) 12 SCC1. Learned counsel for the petitioners has, therefore, prayed that the order of trial court of summoning the petitioners through bailable warrant of arrest may be modified and petitioners may be allowed to appear before the trial court on any date. Per contra, learned Public Prosecutor has submitted that looking to the facts and circumstances of the case, there is no illegality in summoning the petitioners through warrant of arrest, therefore, no interference is called for. It is not disputed that at the first instance the police has filed negative final report after investigating the allegations levelled in the FIR lodged at the instance of the respondent, however, the court below took cognizance against the petitioners on a protest petition filed by the complainant and summoned the petitioners through warrant of arrest. 4 The Hon'ble Apex Court in Inder Mohan goswami's case (supra) has held as under:- When non-bailable warrants should be issued 53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when: * it is reasonable to believe that the person will not voluntarily appear in court; or * the police authorities are unable to

find the person to serve him with a summon; or * it is considered that the person could harm someone if not placed into custody immediately.

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.

55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the 5 complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable-warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the courts proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight- jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

57. The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant.

. In this case, the trial court has not given any reason to summon the petitioners through 6 arrest warrants instead of bailable warrant. In such circumstances, in view of law laid down by the Hon'ble Supreme Court in Inder Mohan's case (supra), this criminal misc. petition is partly allowed. The directions issued by the

trial court and affirmed by the revisional court of summoning the accused-petitioners through warrant of arrest are modified and the petitioners are directed to appear before the trial court on or before 15th December, 2014. If the accused persons appear before the trial court on or before 15th of December, 2014 and furnish personal bonds of Rs.1,00,000/- and two sureties of likewise amount, the trial court is directed to release the petitioners on bail. It is made clear that if the petitioners fail to appear before the court below before 15th of December, 2014, the directions issued by the learned trial court of summoning the petitioners through warrant of arrest shall be revived. The stay petition is also disposed of. [VIJAY BISHNOI].,J.

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