

Ballav Narayan Lenka Vs. State of Orissa

Ballav Narayan Lenka Vs. State of Orissa

SooperKanoon Citation : sooperkanoon.com/525318

Court : Orissa

Decided On : Feb-02-2005

Reported in : 99(2005)CLT455; 2005CriLJ3365; [2005(4)JCR445];
2005(I)OLR487

Judge : I.M. Quddusi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 82, 82(1), 83 and 205

Appeal No. : Crl. Misc. Case No. 2513 of 2004

Appellant : Ballav Narayan Lenka

Respondent : State of Orissa

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : Biswajit Mohanty-3, ;M.N. Ray and ;M.K. Mohanty-2,
Advs.

Judgement :

I.M. Quddusi, J.

1. This petition has been filed challenging the Order dated 22.7.2004 by which the process pending under Sections 82 and 83 of the Code of Criminal Procedure against the petitioner has been ordered to be enforced and the personal

appearance of the petitioner has not been dispensed with under Section 205, Cr.P.C.

2. It appears that the petitioner is an accused in G.R. Case No. 557 of 1997 pending in the Court of Learned Sub-divisional Judicial Magistrate, Bhadrak. After taking cognizance against the petitioner for the offences punishable under Sections 379, 328 and 34, IPC, the Learned Magistrate has issued N.B.W. against the petitioner and when he did not turn up proclamation under Sections 82 and 83, Cr.P.C. was issued which was challenged by the petitioner before this Court in Crl. Misc. Case No. 808 of 2004. It appears that this Court quashed the same vide Order dated 6.5.2005 with the observation that the rest of the order is not interfered with.

3. In pursuance of the above mentioned order of this Court, the Learned Magistrate has served in his impugned order that since the N.B.W. issued against the petitioner has been quashed and rest of the order has been maintained, therefore, proceedings under Section 82 and 83, Cr.P.C. shall remain pending against the petitioner and shall be executed.

4. The question for consideration before this Court is whether the proclamation under Sections 82 and 83, Cr.P.C. can be issued against the persons whose N.B.W. has been quashed by this Court. Since N.B.W. has been quashed, it cannot be presumed that there was an order issuing N.B.W. of arrest pending. For the purpose of Sections 82 and 83, Cr.P.C., it is necessary to peruse provisions of Section 82(1), Cr.P.C. in this regard which is quoted as under :

'82. Proclamation for person absconding : (1) If any Court has reason to belief (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.'

5. A bare reading of Sub-section (1) of Section 82, Cr.P.C. shows that the person against whom a warrant has been issued and the Court is of the opinion that he has absconded or concealed himself shows that such warrant cannot be executed,

then he may publish a written proclamation requiring him to appear at a specific place and time not less than thirty days from the date of publishing such proclamation meaning thereby before issuing process under Sections 82 and 83, Cr.P.C., it is necessary to issue warrant of arrest but if there is no warrant of arrest, there cannot be question of any belief by the Learned Magistrate that the person is absconding. Since warrant of arrest was quashed by this Court, therefore, there remained no warrant of arrest against the petitioner and thus there is no reason before the Court to believe that the petitioner was absconding or concealing himself and thus the proceedings under Sections 82 and 83, in the absence of warrant of arrest has become null and void.

6. In view of the above, the proceedings under Sections 82 and 83, Cr.P.C. could not have remained pending against the petitioner in the absence of warrant of arrest and, therefore, the impugned order in this regard dated 22.7.2004 is liable to be quashed. However, in respect of the application under Section 205, Cr.P.C., since the Court below was of the view that the petitioner should have appeared in person and it was first appearance of the petitioner, inasmuch as he was not on bail, there was no question of allowing the application of the petitioner under Section 205, Cr.P.C. and in this regard the Order of the Court below is not liable to be interfered with.

7. In the facts and circumstances of the case, this petition is disposed of quashing the part of the order by which 82 and 83, Cr.P.C. proceedings have to be held maintainable and as such the proceedings under Sections 82 and 83, Cr.P.C. pending against the petitioner are quashed. However, the petitioner is directed to appear before the Learned Magistrate concerned and in case he appears and moves an application for bail, the same will be considered and disposed of on the same day without considering the past action taken by the Learned Magistrate against the petitioner.