

Pinki Devi and Ors Vs. State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Sep-01-2015

Appellant : Pinki Devi and Ors

Respondent : State of Jharkhand and Anr

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(Cr.) No. 343 of 2015 1. Pinki Devi, daughter of Ram Binayak Singh 2. Niranjana Singh, son of Ram Binayak Singh 3. Bhishan Singh @ Bhishan Narayan Singh, S/o Ram Binayak Singh All are residents of village Binaika PO & PS- Tarhasi, District- Palamau . Petitioners -- Versus-- 1. State of Jharkhand 2. Pawan Kumar, son of Ram Sagar Singh, resident of village Moktama, PO & PS- Chatra, District- Chatra . . Respondents For the petitioners: M/s Mahesh Tiwari & Ajit Kumar Dubey, Advocates For the State : Mr. Pran Pranay, J.C. to S.C.II CORAM: HONBLE MR. JUSTICE RAVI NATH VERMA ----- C.A.V. ON:

28. 08/2015 PRONOUNCED ON:

01. 09/2015 The three petitioners by invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India have questioned the legality of the order dated 29.11.2013, 03.12.2013 and 27.01.2014 passed by the Chief Judicial Magistrate, Palamau whereby and whereunder the warrant of arrest, the proclamation and Process for attachment of property have been issued against the petitioners under Sections 73, 82 and 83 of the Code of Criminal Procedure (in

short the Code) respectively in connection with G.R. Case No. 1057 of 2013 arising out of Tarhasi P.S. Case No. 30 of 2013 instituted under Sections 302/120(B)/34 of the I.P.C.

2. The prosecution case, which is necessary for the proper adjudication of the issue involved in this writ application, in short, is that at the instance of the informant, the aforesaid case was instituted with the allegation that the marriage of his brother was solemnized with petitioner no.1 in the year 2010 as per the Hindu Custom and since after marriage, his brother was subjected to torture by his wife, father-in-law, mother-in-law and brothers-in-law and that on 02.06.2013, the brother-in-laws of the informants brother had come and took his brother on the pretext of a marriage in their family but when even after the marriage, the informant could not contact his 2 brother, he tried to search him and on 09.06.2013, he came to know that his brother has been killed.

3. It appears from the certified copy of the entire order sheet of the court below enclosed with the writ application as Annexure-2 that the F.I.R. of the case was placed before the Chief Judicial Magistrate, Palamau at Daltonganj on 11.06.2013 and 11.09.2013 was the next date fixed for submitting final form. When on 11.09.2013, the final form was not submitted, 24.02.2014 was the next date fixed for submission of final form but before that date on 29.11.2013, the Investigating Officer filed a requisition in the court for issuance of warrant of arrest against the petitioners and the same was issued. On the very next date i.e. 03.12.2013 after almost three days of issuance of warrant, the Investigating Officer returned the warrant to the court and prayed for issuance of proclamation under Section 82 of the Code and the same was issued. Again on the next date, i.e. on 27.01.2014, the I.O. filed a requisition with the execution report of proclamation issued by the Court under Section 82 of the Code with prayer to issue Process under Section 83 of the Code and the same was issued by the court below.

4. Mr. Mahesh Tiwari, learned senior counsel appearing for the petitioners seriously contended that the court below without applying his judicial mind in a mechanical manner issued the warrant of arrest and without following the mandates of Section 82 and 83 issued the proclamation and the processes for

attachment. It was also submitted that on mere perusal of the order sheet enclosed with the writ application, it would appear that the orders of issuance of warrant of arrest and the two subsequent orders passed in Section 82 and 83 of the Code are non-speaking and liable to be quashed in the light of the mandates given by the Honble Supreme Court in the case *Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and another*; (2011) 4 JLJR385(SC).

5. Contrary to the aforesaid submissions, learned counsel representing the State contended that only after filing of a requisition by 3 the Investigating Officer that as the petitioners were evading their arrest, the warrant of arrest was issued and the subsequent orders were also issued on the requisitions filed by the Investigating Officer with execution report. Learned standing counsel further relying upon a Constitution Bench judgment of the Honble Supreme Court submitted that in the said judgment, the Honble Court has held that it is well within the discretion of the court concerned to issue non-bailable warrant of arrest against the accused persons but further held that the discretion given under the law has to be exercised judiciously and not in a mechanical manner. As such, there is no illegality in the order impugned.

6. After hearing both the counsels and after going through the record of the case and especially the certified copy of the order sheets enclosed with the writ application, I find that the court concerned without following the mandates of the Honble Supreme Court issued non-bailable warrant of arrest against the petitioners on requisition filed by the Investigating Officer and on the very next date when the Investigating Officer returned the warrant to the court and prayed for issuance of proclamation under Section 82 of the Code without applying judicial mind issued the proclamation and on the very next date, the process under Section 83 of the Code was also issued. There is absolutely nothing on the record to show or even whisper in the order sheet that the accused persons were evading their arrest or concealed themselves and were declared absconders so that such warrant cannot be executed.

7. In the case of *Inder Mohan Goswami & Anr. Vs. State of Uttranchal & Ors.*; [2008(1) J L J R82(S.C.)], the Honble Supreme Court while dealing with the same

situation observed in paragraphs 50 to 55 as follows:-

50. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants. 4 51. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilized society. Sometimes in the large interest of the Public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued. When non-bailable warrants should be issued.

52. 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.

53. 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.

54. In complaint cases, at the first instance, the court should direct serving of the summons alongwith the copy of the 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 issuance non-bailable warrants.

55. 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.

8. In the light of the guidelines given in the aforesaid case, for better appreciation, a reference of Section 73 of the Code, which deals with the issuance of warrant, is necessary, which reads as follows:- Section 73. Warrant may be directed to any person - (1) The Chief Judicial magistrate or 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.

9. From bare perusal of the above Section, it appears that it confers a duty upon the Magistrate to issue warrant of arrest on three categories of persons namely (i) escaped convict, (ii) proclaimed offender and (iii) a person, who is accused of non-bailable offence and is evading arrest. The Honble Supreme Court in the case of *Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and Another* (supra) considered the issue of execution of non-bailable in paragraph 9, which reads as follows:-

9. It needs little emphasis that since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued mechanically, but only after recording satisfaction that in the facts and circumstances of the case, it is warranted. The Courts have to be extra-cautious

and careful while directing issue of non-bailable warrant, else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India. At the same time, there is no gainsaying that the welfare of an individual must yield to that of the community. Therefore, in order to maintain rule of law and to keep the society in functional harmony, it is necessary to strike a balance between an individual's rights, liberties and privileges on the one hand, and the State on the other. Indeed, it is a complex exercise. As Justice Cardozo puts it on the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice. Be that as it may, it is for the court, which is clothed with the discretion to determine whether the presence of an accused can be secured by a bailable or non-bailable warrant, to strike the balance between the need of law enforcement on the one hand and the protection of the citizen from highhandedness at the hands of the law enforcement agencies on the other. The power and jurisdiction of the court to issue appropriate warrant against an accused on his failure to attend the court on the date of hearing of the matter cannot be disputed. Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter alia, to the nature and seriousness of the offence involved; the past conduct of the accused; his age and the possibility of his absconding.

10. Apparently, the court below has not considered and followed the mandates given in the above two judgments and without applying his judicial mind in a mechanical way passed the order without showing any reason or recording any satisfaction regarding issuance of non-bailable warrant and also the subsequent orders i.e. issuance of proclamation and processes under Sections 82 and 83 of the Code. The submission of the learned standing counsel representing the State that on requisitions filed by the Investigating Officer showing the petitioners evading their arrest, warrant and subsequent proclamation and processes were issued, I do not find any substance in his submission. Hence, I am constrained to hold that the above orders, which were issued without following the mandates given by the Honble Supreme Court, are liable to be set aside.

11. In the result, the aforesaid Writ Petition (Cr.) is allowed. The orders passed by the court of Chief Judicial Magistrate, Palamau at Daltonganj dated 29.11.2013 issuing non-bailable warrant and subsequent orders dated 03.12.2013 and 27.01.2014 issuing proclamation and processes for attachment of property of the petitioners are, hereby, quashed. The court below is directed to proceed in accordance with law. (R.N. Verma, J.) Jharkhand High Court, Ranchi Dated, 1st September, 2015 Ritesh/N.A.F.R.

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