

Basant Kumar Sinha Alias Basant Sinha Vs. The State of Jharkhand

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Court : Jharkhand

Decided On : Sep-09-2015

Appellant : Basant Kumar Sinha Alias Basant Sinha

Respondent : The State of Jharkhand

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr.M.P. No.2703 of 2014
With I.A. No.1666 of 2015 Basant Kumar Sinha @ Basant Sinha Petitioner
Versus The State of Jharkhand . Opposite Party CORAM: HONBLE MR. JUSTICE
H.C. MISHRA For the Petitioner : Mr. Prashant Pallav, Advocate For the State :
Mr. Laxmi Murmu, A. P.P. For the Informant : Mr. A.K. Pandey, Advocate -----
5/09.09.2015 Heard learned counsel for the petitioner and learned counsel for the
State as also learned counsel for the informant.

2. Petitioner is aggrieved by orders dated 6.8.2014, 14.8.2014 and 31.10.2014
passed by the Court below in Golmuri P.S. Case No.35 of 2014, corresponding to
G.R. No.576 of 2014, whereby non-bailable warrant and process under Section 82
of the Cr.P.C., have been issued against the petitioner upon requisition made by
the I.O. of the case. Through I.A. No.1666 of 2015, the petitioner has challenged
the order dated 9.2.2015 passed by the Court below in the said case, whereby, the
process under Section 83 of the Cr.P.C., was issued against the petitioner, again
on the requisition made by the I.O. of the case.

3. Petitioner has been made accused in Golmuri P.S. Case No.35 of 2014, corresponding to G.R. No.576 of 2014, which was instituted for the offence under Sections 498-A, 323, 420, 406, 120-B, 354 and 494 of the IPC. The petitioner is the husband of the complainant informant. It appears from the order sheet of the Court below brought on record, that the FIR was received in the Court below on 14.2.2014 and the requisition was made by the I.O. of the case for issuing non-bailable warrant against the petitioner, whereupon by orders dated 6.8.2014 and 14.8.2014, non-bailable warrant was ordered to be issued against the petitioner. Subsequently, on 14.10.2014, requisition was again made for issuance of process under Section 82 of the Cr.P.C., which was ordered to be issued by order dated 31.10.2014, and again on the requisition made by the I.O. for issuance of process under Section 83 of the Cr.P.C., the same was also issued by order dated 9.2.2015 by the Court below, which have been challenged in the present application.

4. It has been submitted by the learned counsel for the petitioner that the petitioner had filed application for anticipatory bail, in which the counter affidavit was filed on behalf of the State, in which, it was stated that the statements of the petitioner and his father were recorded by the police. Accordingly, it is submitted that the petitioner was not absconding and he was making himself available before the police officer, who had also recorded the statement of the petitioner. It is submitted that simply on the basis of the requisition made by the I.O. of the case, the NBW and processes, as aforesaid, have been issued against the petitioner without any application of the judicial mind and without recording his subjective satisfaction, that the issuance of the non-bailable warrant and the processes were required in the case or not. Learned counsel accordingly, submitted that the impugned order cannot be sustained in the eyes of law. -2- 5. Learned counsel for the State as also learned counsel for the informant, on the other hand, have opposed the prayer and it is submitted by the learned counsel for the informant that there is no illegality in the impugned orders and even though, the statements of the petitioner and his father were recorded by the I.O., subsequently, they started evading the police and the requisitions were made by the I.O. of the case for issuing non-bailable warrant as also the processes against the petitioner, on the basis of which, the Court below issued the warrant and processes against the petitioner. It

has been submitted that there is no illegality in the impugned orders passed by the Court below.

6. Having heard learned counsels for both the sides and upon going through the record, I find that the Court below has directed for issuance of non-bailable warrant and processes under Section 82 and 83 of the Cr.P.C., against the petitioner without recording his subjective satisfaction. The law has been laid down by the Supreme Court of India in *Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra & Anr.*, reported in 2011(4) JLJR385(SC), wherein, it has been held 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. -----.
(Emphasis supplied).

7. In view of the law settled by the Supreme Court of India, I am of the considered view that since the subjective satisfaction of the Court below has not been recorded in the impugned orders issuing non-bailable warrant and processes

under Sections 82 and 83 of the Cr.P.C., they are absolutely illegal and cannot be sustained in the eyes of law.

8. Accordingly, the impugned orders dated 6.8.2014, 14.8.2014, 31.10.2014 and 9.2.2015 passed by the Court below in Gomuri P.S. Case No.35 of 2014, corresponding to G.R. No.576 of 2014, are hereby, quashed.

9. It is made clear that the I.O. of the case shall be free to exercise his powers under the Criminal Procedure Code with respect to the offenders of cognizable and non-bailable offences. With these directions, this application stands allowed. Consequently, the I.A. No.1666 of 2015 also stands disposed of. (H. C. Mishra, J)
R.Kumar

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