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Sharda Devi and Ors Vs. The State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Nov-23-2015

Appellant : Sharda Devi and Ors

Respondent : The State of Jharkhand and Anr

Advocate for Pet/Ap. : Mr. Kaushik Serkhel

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (Cr.) No. 359 of 2015 1. Sharda Devi, Wife of Sri Yogi @ Yogendra Prasad Sah, resident of village- Saidapur, PO,PS & District- Godda 2. Uttam Kumar, Son of Sri Yogi @ Yogendra Prasad Sah, resident of village- Saidapur, PO, PS & District- Godda 3. Kailash Prasad @ Kailash Sah @ Kailash Prasad Shah, Son of Late Denarayan Sah, resident of village Jamin Paharpur, PO, PS & District- Godda . Petitioner(s) -V e r s u s- 1. State of Jharkhand 2. Niharika Rani, Nurse Banka Hospital, daughter of Shila Devi, resident of Rajmahal, PS Rajmahal, District- Rajmahal at present residing at Jirwabari, PO & PS- Jirwabari, District Sahebaganj . ... Respondents CORAM: - HONBLE MR. JUSTICE RAVI NATH VERMA For the Petitioner(s) : - Mr. Kaushik Sarkhel, Advocate For the State : - Mr. Pran Pranay, J.C. to S.C.II ---------- C.A.V. ON:

21. 09/2015 PRONOUNCED ON:

23. 11/2015 Invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India, the three petitioners have questioned the legality of the orders dated 30.05.2012, 05.09.2012, 20.09.2013 and 21.04.2015 passed by Sub-Divisional Judicial Magistrate, Sahebganj in P.C.R. Case no. 37 of 2010 whereby and whereunder the warrant of arrest under Section 73 of the Code of Criminal Procedure (in short the Code), the proclamation and the Processes for attachment under Sections 82 and 83 of the Code respectively have been issued and the petitioners have been declared as permanent absconders.

2. Bereft of unnecessary details, the facts, which are necessary to be stated, are that at the instance of complainant- respondent no.2 Niharika Rani, a written report was submitted with the allegation that on 07.12.2009 at about 4 P.M., she was in her house along with her son, somebody rang the door-bell and when she opened the door, suddenly three persons, who are the petitioners here, pushed the complainant respondent no.2 and entered into her house. When the complainant tried to call her son, one of the accused Kailash Prasad @ Kailash Sah took out his pistol and put the same on the chest of her son and threatened not to make any hue and cry. The 2 accused persons were in fact searching her husband and were using filthy languages that after solemnizing second marriage, her husband has disappeared and the moment they get her husband, they would kill him. The accused persons, i.e. the petitioners assaulted the complainant and her son with fists and slaps and took away one briefcase in which gold and silver ornaments of her daughter were kept. When her husband came in late night, she narrated the incidence.

3. It appears from the record that after examination of the complainant on S.A. and other witnesses, the learned S.D.J.M., Sahebganj finding sufficiency of material and the prima facie case against the petitioners, took cognizance of the offence under Sections 323, 341, 448, 380 and 34 I.P.C. and directed to issue summons against the present petitioners. It further appears from the certified copy of order-sheet of the court below enclosed with this writ application that summons were issued on 13.04.2010 and without waiting for the service report of the summons, bailable warrant of arrest was issued on 28.07.2011. Again without waiting for the service report of either summon or bailable warrant, the court below issued the

non-bailable warrant of arrest against the petitioners vide order dated 30.05.2012. The petitioners were unaware of the pendency of this case and never received either summon or warrant and without waiting for the execution report, the process under Section 82 of the code was issued on 05.09.2012. The record of the case was, thereafter, transferred to the another court and the said court also ignoring the mandates given by Honble Supreme Court in several cases and without waiting for the execution report of the proclamation issued under Section 82 of the Code, directed to issue process for attachment of the properties of petitioners under Section 83 of the Code vide order dated 20.09.2013. Thereafter vide order dated 21.04.2015, all the three petitioners were declared permanent absconders.

4. Learned counsel Mr. Kaushik Serkhel appearing for the petitioners submitted that though prayer has been made in the writ 3 application for quashing of the entire criminal proceeding arising out of P.C.R. Case No.- 37 of 2010 but his submission is now confined to the arbitrary issuance of non-bailable warrant, the proclamation, process for attachment of property of the petitioners under Sections 82 and 83 of the Code and declaration of the petitioners as permanent absconders. Learned counsel seriously contended that the court below without following the mandates of the above provision passed the orders in a mechanical manner without applying his judicial mind and on mere perusal of the order sheet of the court below, it would appear that the orders passed by the court below are non- speaking and without recording any satisfaction of the Court. Hence, the above orders are liable to be quashed in the light of mandates given by the Honble Supreme Court in the cases Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and another; (2011) 4 JLJR385(SC) and Inder Mohan Goswami & Anr. Vs. State of Uttranchal & Ors.; [2008(1) J L J R82(S.C.)].

5. Contrary to the aforesaid submissions, learned counsel representing the State contended that on applications filed by the Investigating Officer for issuance of warrant of arrest as the petitioners were evading their arrest, the court below issued the warrant of arrest and subsequently the order of issuance of proclamation under Section 82 and attachment of the property of the petitioner under Section 83 of the Code were issued and finally the petitioners were declared permanent absconders. 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 of the court below 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 mere requisitions filed by the Investigating Officer and without applying judicial mind further issued the proclamation under Section 82 and attachment of property of the petitioners under 4 Section 83 of the Code and finally declared the present petitioners as absconders.

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 similar 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.

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 bailalbe 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 5 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, 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 warrant in paragraph 9 and 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 6 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 that issuance of non-bailable warrant amounts to curtailment of liberty of a person, in a mechanical manner, passed the orders without showing any reason or recording any satisfaction regarding issuance of non-bailable warrant, the proclamation under Sections 82 of the Code and attachment of property of the petitioner under Section 83 of the Code and has declared the petitioners as permanent absconders. Undoubtedly, the Court has every power to take the above steps but the same has to be exercised judiciously and not arbitrarily as has been done in the instant case.

11. In the result, this Writ Petition (Cr.) is, hereby, allowed. The orders passed by the court of Sub-Divisional Judicial Magistrate, Sahebganj dated 30.05.2012 issuing non-bailable warrant and orders dated 05.09.2012 and 20.09.2013 by which order of proclamation and attachment of property respectively were issued and also order dated 21.04.2015 by which the petitioners were declared permanent absconders are, hereby, quashed. The court below is directed to proceed in accordance with law. (R.N. Verma, J.) Jharkhand High Court, Ranchi Dated, 23rd November, 2015 Ritesh/N.A.F.R.

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