

**Anil Kumar Vs. The State of Jharkhand and Anr**

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**Court :** Jharkhand

**Decided On :** Dec-11-2015

**Appellant :** Anil Kumar

**Respondent :** The State of Jharkhand and Anr

**Advocate for Pet/Ap. :** Mrs. Rakhi Rani

**Judgement :**

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr.M.P. No. 2980 of 2013  
Anil Kumar, Son of Shri Shyamlal Prasad, resident of Daffodils Apartment, RZ206027, 1 st Floor, P.O./P.S. - Govindpuri, Tughlabad Extn., New Delhi.  
Petitioner -V e r s u s- The State of Jharkhand ... Opposite Party  
CORAM: HONBLE MR. JUSTICE PRASHANT KUMAR. For the Petitioner : - Mrs. Rakhi Rani, Advocate. For the State : - Mrs. Vandana Bharti, A.P.P. 12/11.12.2015  
In this application petitioner has made following prayers:- (i) The order dated 23.03.2011 passed in A.B.A. No. 3904/2010 be modified to the extent that the amount of Rs. 2,50,000/-, deposited by the accused (Pawan Kumar Pandey) in the learned court below in compliance of the aforesaid order may be released in favour of the petitioner, because accused is not co-operating in the trial. (ii) Petitioner further prays for issuance of an order directing the learned court below to release Rs. 2,50,000/- in favour of the petitioner / informant. It appears that petitioner, who is the informant of this case, lodged an F.I.R. alleging therein that he took an agency of Himtaz Herbal Company, Faridabad from accused (Pawan Kumar Pandey) in September, 2008. It is further alleged that in the month of

December, 2008 Pawan Kumar Pandey suddenly stopped the business without any information. Thereafter, petitioner went to Faridabad and demanded Rs. 4,50,000/- which the petitioner deposited with the Company of Pawan Kumar Pandey. It is stated that Pawan Kumar Pandey gave two cheques of IDBI Bank 2 bearing No. 340491 and 340492 to the petitioner. It is stated that the petitioner presented both cheques for encashment, which were dishonoured by the bank due to insufficiency of fund. It is stated that when petitioner talked to Pawan Kumar Pandey, he gave Rs. 2,00,000/- to the petitioner and said that the balance amount will be paid to him within two days. It is alleged that the rest of the amount has not been paid by the accused. Hence, the petitioner lodged the F.I.R., bearing number Namkum P.S. Case No. 91 of 2009, under Section 420 read with Section 34 of the I.P.C. and Section 138 of the Negotiable Instrument Act. It appears that thereafter Pawan Kumar Pandey filed an application for anticipatory bail in this court vide A.B.A. No. 3904 of 2010. It is worth mentioning that the petitioner also appeared in the said anticipatory bail application and opposed the same. However, since Pawan Kumar Pandey gave an undertaking that he would deposit Rs. 2,50,000/- in the court below, subject to the result of the case, this Court vide order dated 23.03.2011 granted bail to the accused (Pawan Kumar Pandey), subject to the condition that Pawan Kumar Pandey will deposit Rs. 2,50,000/- in the court below. The court below was further directed to pay the aforesaid amount of Rs. 2,50,000/- to the accused (Pawan Kumar Pandey) if he will be acquitted from the charges leveled against him or to informant (this petitioner) if Pawan Kumar Pandey will be convicted. It appears that in compliance of aforesaid order dated 23.03.2011 passed in A.B.A. No. 3904 of 2010, the accused (Pawan Kumar Pandey) surrendered in the court below and took bail after depositing Rs. 2,50,000/-. It appears that thereafter charge sheet submitted against the accused (Pawan Kumar Pandey) and the learned court below took cognizance of the offences. Thereafter, the 3 learned court below issued summons to the accused (Pawan Kumar Pandey), but in response of the summons, he did not appear. Thereafter, warrant of arrest issued against him, but in spite of that, he did not appear. Then, process under Section 82 of the Cr.P.C. issued, but, in vein. It appears that now the case is pending in the court below for appearance. Now, the petitioner filed this application for modification of the order dated 23.3.2011, passed in A.B.A. No.

3904 of 2010, whereby this court directed the learned court below to pay Rs.2,50,000/- to the accused (Pawan Kumar Pandey), if he will be acquitted from the charges leveled against him or to this petitioner (informant) if the accused will be convicted. Petitioner further prayed that after modifying the aforesaid order, a direction may be issued to the court below to release Rs.2,50,000/-, deposited by the accused (Pawan Kumar Pandey), in favour of the petitioner (informant). In this case, several time notices issued to accused (Pawan Kumar Pandey) by registered post as well as by ordinary process, but the same returned unserved, because the address of the accused (Pawan Kumar Pandey) was not correct. Thereafter, on 11.9.2015, petitioner orally seek permission to struck off the name of the accused (Pawan Kumar Pandey) from the cause title of this case. Accordingly, the petitioner was permitted to struck off the name of the accused (Pawan Kumar Pandey) at his own risk. Thereafter, petitioner struck off the name of the accused (Pawan Kumar Pandey) from the cause title of the case. Under the aforesaid circumstance, this case is being heard today in absence of the accused (Pawan Kumar Pandey). It is submitted by Mrs. Rakhi Rani, learned counsel for the petitioner that the accused (Pawan Kumar Pandey) after taking bail from the learned court below is not appearing in spite of issuance of summons, warrant of arrest and process 4 under Section 82 of the Cr.P.C. and because of his absence, there is no progress in the trial. Therefore, under the change circumstance, petitioner filed this application for modification of the order dated 23.3.2011 passed in A.B.A. No. 3904 of 2010 and he prayed that an order be passed directing the learned court below to pay Rs. 2,50,000/-, deposited by the accused (Pawan Kumar Pandey), in favour of the petitioner. It is submitted that in view of Judgments passed by Hon'ble Supreme Court and different High Courts in the case of Superintendent and Remembrance of Legal Affairs, W.B. Vrs. Mohan Singh & Others reported in AIR 1975 SC1002 Dr. A.M. Beri Vrs. Ravi Arora & Others reported in 1992 Criminal Law Journal 1327, Joseph Paul Vrs. Mrs. Shelly Dhall reported in 2008 Criminal Law Journal (NOC) 1303 (Bom.), State represented by DSP, SB CID, Chennai Vrs. K.V. Rajendran & Others reported in (2008) 8 SCC673 under the change circumstance, an application under Section 482 of the Cr.P.C. is maintainable for the reliefs claimed in this application. On the other hand, Mrs. Vandana Bharti, learned Additional P.P. submits that this

application is not maintainable as the relief claimed therein is barred by Section 362 of the Cr.P.C. She further submits that by the present application petitioner wants to modify the order of this Court passed in A.B.A. No. 3904 of 2010, which had already taken effect. She further submits no such order can be passed in absence of affected person i.e., the accused (Pawan Kumar Pandey). Having heard the submissions, I have gone through the record of the case. The main contention of the petitioner in this case is that because the accused namely, Pawan Kumar Pandey is not appearing in the trial Court, even after service of summons, issuance of warrant of arrest and 5 process under Section 82 of the Cr. P.C., the trial is being delayed. Therefore, under the change circumstance, the order dated 23.03.2011 be modified and the trial court may be directed to make payment of Rs. 2,50,000/- to the petitioner. The photo state copy of entire order sheets of the court below, annexed in this case as Annexure-3. Though, it appears from the order sheet that the summons, warrant of arrest and process under Section 82 of the Cr.P.C. issued against the accused namely, Pawan Kumar Pandey, but there is nothing to show that the aforesaid processes served upon the petitioner. It is well settled that if the accused is on bail from before the date of submission of charge sheet, then it is incumbent upon the trial court to serve notice upon him after submission of the charge sheet. As in the instant case accused Pawan Kumar Pandey was on bail from before the date of submission of charge sheet, therefore, in my view, it is imperative for the court below to serve notice upon him after submission of charge sheet. In the instant case, I find that the charge sheet submitted on 18.5.2011 i.e., after the accused enlarged on bail. Under the said circumstance, the service of summon on the accused is necessary. As noticed above, in the instant case, the summon has not been served upon the accused namely, Pawan Kumar Pandey, thus, the submission of learned counsel for the petitioner that the trial of the court below is being delayed at the instance of accused namely, Pawan Kumar Pandey does not appear to be correct. Moreover, the name of accused Pawan Kumar Pandey has been struck off from the cause title of this application, therefore, in his absence, no adverse order can be passed against him. Section 362 of the Cr.P.C. reads as follows:

362. Court not to alter judgment.- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, 6 when it has signed its

judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error. Thus from the plain reading of the above provision, it is clear that the final order passed in A.B.A. No. 3904 of 2010 cannot be altered and/or revised by exercising jurisdiction under Section 482 of the Cr.P.C. It has been held by the Hon'ble Supreme Court in the case of State represented by DSP, SB CID, Chennai (Supra) that - If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction. Section 482 Cr.P.C. cannot be exercised to reopen or alter an order disposing of a petition decided on merits. Section 362 Cr.P.C. prohibits reopening of a final order except in the cases of clerical or arithmetical errors. Section 482 Cr.P.C. enables the High Court to make such order as may be necessary to give effect to any order under Cr.P.C. or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, are as much controlled by principle and precedent as are its express powers by statutes. Thus, in view of the aforesaid law laid down by their lordships of the Hon'ble Supreme Court in exercise of power under Section 482 of the Cr.P.C., any final order passed earlier cannot be revised by ignoring the provision contained in Section 362 of the Cr.P.C. The Judgment relied by the learned counsel for the petitioner in Superintendent and Remembrance of 7 Legal Affairs, W.B. Vrs. Mohan Singh & Others (Supra) has no application in the facts and circumstance of this case, because in that case their Lordships had categorically held that by filing a separate application under Section 482 of the Cr.P.C., earlier order cannot be revised and/or altered. However, in that case, their Lordships further held that if earlier application for quashing of the proceeding has been dismissed, then a fresh application for quashing of the proceeding can be filed on fresh ground. Thus, the law laid down in the aforesaid judgment is not applicable in the facts of this case, because petitioner prayed that the order passed by this Court in A.B.A. No. 3904 of 2010 be modified and a fresh direction be issued for release of the amount deposited by the accused in favour of the petitioner (informant) without waiting the result of the trial. The other decisions cited by learned counsel for the petitioner in Dr. A.M. Beri Vrs. Ravi Arora & Others (Supra) and Joseph Paul Vrs. Mrs. Shelly Dhall (Supra) has also no application in the facts of this case, because the same relates to

subsequent filing of anticipatory bail application as well as for quashing the application on fresh ground. As in the instant case, the prayer made by the petitioner is barred by Section 362 of the Cr.P.C., therefore, this application is not maintainable. In view of the discussions made above, I find no merit in this application, accordingly, the same is dismissed. ( Prashant Kumar, J.) sunil/

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