

Rajnish Kumar Singh Alias Rajnish Kumar Vs. The State of Jharkhand

Rajnish Kumar Singh Alias Rajnish Kumar Vs. The State of Jharkhand

SooperKanoon Citation : sooperkanoon.com/70530

Court : Jharkhand

Decided On : May-20-2016

Appellant : Rajnish Kumar Singh Alias Rajnish Kumar

Respondent : The State of Jharkhand

Judgement :

1 In the High Court of Jharkhand at Ranchi Cr.Rev. no.512 of 2015 Rajnish Kumar Singh @ Rjnish Kumar son of Shambhu Nath Singh, resident of National Institute of Financial Planning (NIFP), 6th floor, Jagannath Apartment, Circular Road, P.O. & P.S Lalpur, Dist-Ranchi, Jharkhand, presently at no.2, 2nd floor,Gangadhar Acharya Layout, Devsharan, Main Road, Ayyappa Nagar, R.P.Puram, Bangalore (Karnataka).....Petitioner VERSUS State of Jharkhand.....Opposite Party CORAM: HON'BLE MR. JUSTICE ANANDA SEN For the Petitioner: M/s. Krishna Murari and Ahmed Raza For the State : Mr. Vikash Kishor, APP For the Informant: In person Reserved on 29.4.2016 Delivered on 20.5.2016 20/ .5.16. In this revision application, the petitioner has prayed for quashing of the order dated 5.12.2013 and also for quashing the order dated 2.3.2015 passed in G.R.No.240 of 2012 y the Judicial Magistrate, Ranchi. By order dated 5.12.2013 the learned Magistrate issued non-bailable warrant of arrest against the petitioner on the petition filed by the Investigation Officer and by order dated 2.3.2015 process under Section 82 of the Code of Criminal Procedure issued against the petitioner on the application filed by the Investigating Officer. Being aggrieved with the said two orders, the

petitioner has filed this application for setting aside the same. A complaint petition was filed by one Santosh Kumar Soni implicating this petitioner and others as accused for allegedly committing an offence under Sections 409, 420, 503, 506/34 of the Indian Penal Code. The said complaint was referred under Section 156

(3) of the Code of Criminal Procedure to Dhurwa Police Station for registering FIR, thus Dhurwa P.S. Case no.11 of 2012 was registered for an offence under Sections 409, 420, 503, 506/34 of the Indian Penal Code. 2 The complainant/informant has stated in the complaint that he has invested R.1,19,000/- through franchise's member accused no.3 and 4 as both of them were neighbour of the complainant/informant. The entire dispute, which is apparent from the complaint, is in respect of investment in shares and selling of the shares. The petitioner claimed that he was cheated by the accused persons in course of the said transaction and as such, the criminal case was instituted. Since the criminal revision application is confined to quashing of the two orders passed by the court below, by which warrant of arrest and process under Sections 82 has been issued, it is not necessary to mention the details about the nature of dispute. On the requisition of Investigating Officer, the order dated 5.12.2013 was passed by which non-bailable warrant of arrest was issued and again on the petition filed by the Investigating Officer, learned Magistrate passed an order on 2.3.2015 issuing process under Section 82 of the Code of Criminal Procedure. Learned counsel appearing for the petitioner submits that both the orders are absolutely bad and is against the provision of law. He further submits that the court below has not followed the provision laid down in the law while issuing the impugned order, rather in a most mechanical manner has passed the impugned order which needs to be set aside. The complainant/informant appeared in person. The complainant submits that earlier the accused along with others have filed Cr.M.P.No.2895 of 2014 (an application under Section 482 of the Code of Criminal Procedure) for quashing the order dated 5.12.2013 which is also the subject matter of this case. Thus, there cannot be two applications for the same self relief and on this score alone, this application is liable to be dismissed. He further submits that the order is absolutely in terms of the provision of law and needs no interference. 3 So far as the contention of the opposite party no.2 that in Cr.M.P.No.2895 of 2014 order dated 5.12.2013 was challenged and also a subject matter of this revision

application. I find that the said quashing application was allowed to be withdrawn by a Bench of this Court on 7.7.2015. Since the said Cr.M.P.No.2895 of 2014 was withdrawn, there is no bar for this Court to proceed in the present revision application and decide the same on its own merit. Now it is to be seen whether the order dated 5.12.2013 is proper or not. The order dated 5.12.2013 reads as under: I.O. filed a petition for issuing warrant of arrest against the accused persons namely,

(1) Amit Kumar S/o Arbind Kumar Singh

(2) Amrendra Kumar Singh S/o Surendra Pd. Singh

(3) Rajnish Kumar Singh S/o Shambhu Nath Singh. Hence, o/c to issue non-bailable warrant of arrest. From the order aforesaid it is apparent that on a petition filed by the Investigating Officer praying therein to issue warrant, the impugned order was passed. The petition of the Investigating Officer is annexed by the petitioner as Annexure 3 which has been signed by the Investigating Officer on 24.11.2013. I have perused the said petition. In the said petition, the Investigating Officer has prayed before the court to issue warrant of arrest against three persons including the petitioner giving their addresses and details. In the said petition, the reason given by the Investigating Officer for praying to issue warrant are as follows: mijksDr vfHk;qDrksa ds fo:) fuEufyf[kr lk{; miyC/k gSA1 ;s fd izkFkfedh ds uketn vfHk;qDr gSA2 ;g fd tkylkth o vekur esa [k;kur dj iSlk xcu djus dk vkjksi gSaA fo'olkHkktu egsUnzegrks 24-11-13 From the aforementioned petition, it is quite clear that the materials available before the Investigating Officer is

(1) that the petitioner and 4 others are named accused

(2) there is allegation of committing fraud and misappropriation against the petitioner. At this juncture, it is necessary to refer to Section 73 of the Code of Criminal Procedure which reads as follows:

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. From bare perusal of the above Section, it appears that it confers a duty upon the Magistrate to issue warrant of arrest upon three classes of persons namely (i) escaped convict (ii) a proclaimed offender (iii) a person who is accused of non-bailable offence and is evading arrest. From perusal of the petition filed by the Investigating Officer it is quite clear that neither the petitioner is an escaped convict nor a proclaimed offender. Though he is accused of an offence which is non-bailable in nature yet in the entire petition filed by the Investigating Officer nowhere it has been whispered that he is evading arrest. The Investigating Officer simply prayed for issuance of warrant of arrest only because the petitioners are named accused and there is allegation against them that they have committed offence of fraud and misappropriation of fund. This cannot be a ground to issue warrant of arrest. The court below simply on the petition filed by the Investigating Officer, without applying provision of law, has issued the impugned order dated 5.12.2013 which has been reproduced above. 5 The Honble Supreme Court in the case of State through C.B.I vs. Dawood Ibrahim Kaskar [1997 (2) East Cr. C.124 (SC)] has observed as under: That Section 73 confers a power upon a Magistrate to issue a warrant and that it can be exercised by him during investigation also, can be best understood with reference to Section 155 of the Code. As already noticed under this section a police officer can investigate into a non-cognizable case with the order of a Magistrate and may exercise the same powers in respect of the investigation which he may exercise in a cognizable case, except that he cannot arrest without warrant. If with the order of a Magistrate the police starts investigation into a non-cognizable and non-bailable offence [like Section 466 of 467 (Part-1) of the Indian Penal Code] and if during investigation the Investigating Officer intends to arrest the person accused of the offence he has to seek for and

obtain a warrant of arrest from the Magistrate. If the accused evade the arrest, the only course left open to the Investigating Officer to ensure his powers under Section 73 and thereafter those relating to proclamation an attachment. In such an eventuality, the Magistrate can legitimately exercise his power under Section 73 for the person to be apprehended is accused of a non-bailable offence and is evading arrest. Consequently, it was held that Section 73 of the Code is of general application and that in course of investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of non-bailable offence and is evading arrest. While holding so, it was also observed that warrant of arrest cannot be issued only for helping and assisting the prosecution/police investigation. Thus, the question which is to be considered as to whether the issuance of warrant of arrest against the petitioners is in consonance with the provision of Section 73(1) of the Code of Criminal Procedure or not ? From perusal of the requisition (Annexure 1), on the basis of which an order was passed for issuance of warrant of arrest, it would appear that warrant of arrest was sought to be issued on the ground that only upon arrest of the accused person something could be divulged in the matter and that the accused person in that event could be forced to surrender before the Court and is also there that sufficient materials have been collected against the petitioner but none of the grounds mentioned in the requisition comes within the purview as contained in Section 73 of the Code. Nowhere it has been stated that in the requisition that accused is evading arrest and in such situation, learned Magistrate certainly committed illegality in passing the order relating to issuance of warrant against the petitioner. Thus, from the aforementioned proposition of law and perusal of the said order it is quite clear that the order dated 5.12.2013 is absolutely bad, non-speaking and is against the provision of law. Thus, the same is set aside. The order dated 2.3.2015 which is also impugned in this case has been passed on the prayer made by the Investigating Officer. The said application of the Investigating Officer dated 2.3.2015 is annexed as Annexure 5 to this application. In the said petition, the Investigating Officer mentions that from the Mobile Tower location of the Mobile of the petitioner, it transpires that the location of the said Mobile is in Bangalore and his address is also at Bangalore. He further submits that from the aforementioned Mobile Tower location, it transpires that this petitioner is residing

at Bangalore and his address is not tallying with the address mentioned in the warrant, as such he prayed for issuance of the process under Section 82 of the Code of Criminal Procedure. Nowhere in the said petition, the Investigating Officer has whispered that this petitioner is evading arrest or not. Further the petition filed by the Investigating Office also does not suggest that the petitioner has tried to conceal himself from the police or in spite of calling to participate in the investigation, he is not doing so. To issue an order under Section 82 of the Code of Criminal Procedure, there must be a finding or satisfaction of the court below that the accused is absconded or concealing himself so that warrant cannot be executed. Nowhere in the petition filed by the Investigating Officer it is mentioned that this petitioner is absconder or is concealing himself so that warrant cannot be executed. Learned Magistrate in a most mechanical manner without recording the satisfaction that the petitioner is absconding or is concealing himself in such a manner that warrant of arrest cannot be executed, has issued process under Section 82 of the Code of Criminal Procedure. The order dated 2.3.2015 is not only cryptic but is also illegal and is liable to be set aside. 7 Consequently, the order dated 5.12.2013 passed by the Judicial Magistrate, 1st class, Ranchi in connection with Dhurwa P.S. case no.11 of 2012 corresponding to G.R. No.240 of 2012 by which non-bailable warrant of arrest has been issued and also the order dated 2.3.2015 passed by the Judicial Magistrate, Ranchi for issuing process under Section 82 of the Code of Criminal Procedure are hereby set aside. Accordingly, this application stands allowed. It goes without saying that the Investigating Officer would be at liberty to proceed with the investigation in accordance with law. (Ananda Sen, J.) ND/

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com