

(2013) 07 JH CK 0201

In the Jharkhand High Court

Case No : Criminal M.P. No. 1051 of 2013

Birendra Thakur @ Birendar Thakur @ Birendra Nath
Petitioners Thakur and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2013) 4 JLJR 11

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Gautam Kumar and Naresh Pd. Thakur, for the Appellant;

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioners and learned counsel appearing for the State. It appears that on 5.2.2013, when the matter was posted for evidence before the charge, an application was filed u/s 317 Cr.P.C. on behalf of the petitioners, which was rejected by the court below and consequently, an order was passed for issuance of warrant of arrest.

2. That order is under challenge.

3. Mr. Gautam Kumar, learned counsel appearing for the petitioners submits that on 5.2.2013, a representation was filed by these petitioners, which was rejected and straightaway warrant of arrest was ordered to be issued, though the court, in terms of the provision as contained Section 317(2) Cr.P.C. should have asked these petitioners to remain present physically, if it appears to the court that their presence is required, but without resorting to that provision, the court straightaway rejected the application and cancelled the bail bond and then passed an order for issuance of warrant of arrest non-bailable, which order, in view of the aforesaid situation, is quite bad.

4. Provision as contained in sub-section 2 of provision 317 Cr.P.C. reads as follows:--

(2) If the accused in any such case is not represented by a Pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourns such inquiry or trial, order that the case of such accused be taken up or tried separately.

5. The said provision relates to inquiry and trial being held in the absence of accused in certain cases. However, if the Magistrate, finds that personal appearance of the accused is necessary, he would direct that accused should remain present physically on the next date and if the accused in spite of such order do not appear in person, it would be open for the learned Magistrate to issue warrant of arrest and proceed in accordance with law and may also cancel bail, but here in the instant case, as it appears from the order dated 5.2.2013 that the petitioners had never been asked to remain present on 5.2.2013.

6. In that view of the matter, impugned order dated 5.2.2013 certainly appears to be illegal. Accordingly, it is set aside.

7. In the result, this application is allowed. Let a copy of this order be communicated through fax at the cost of the petitioners.