

(2015) 08 JH CK 0016
In the Jharkhand High Court
Case No : W.P. (Cr.) No. 318 of 2015

Dilip Kumar Mahto and Others	Vs	APPELLANT
The State of Jharkhand		RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 73
Forest Act, 1927 — Section 33
Penal Code, 1860 (IPC) — Section 34, 413, 414

Citation : (2015) 3 JLJR 606

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : Kalyan Roy and Sidhartha Roy, for the Appellant; Ram Nivas Roy, for the Respondent

Judgement

Ravi Nath Verma, J.—The two petitioners by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India have prayed to quash the order dated 23.1.2015 passed by learned Sub-Divisional Judicial Magistrate, Bermo at Tenughat, Bokaro whereby non-bailable warrant of arrest has been issued against the petitioners without following the ingredients of Section 73 of the Code of Criminal Procedure (in short "the Code") and complying the mandates and the guidelines given by Hon'ble Supreme Court. The factual aspects, which is relevant for the purposes of adjudication of the issue involved in this case, in short, is that after getting some secret information that in the hard coke factory of the petitioners coal illegally extracted from the forest area has been stocked. The informant of this case conducted raid in the factory premises but after seeing the police party the persons inside the factory fled away and the informant found 100 tones of steam coal. On enquiry, the informant came to know that the petitioners are the owners of the factory and they are indulged in illegal coal business. Whereafter Mahuatand P.S. Case No. 74 of 2014 corresponding to G.R. No. 1315 of 2014 was instituted under Sections

413 /414 /34 of Indian Penal Code and also under Section 33 of Indian Forest Act.

2. In course of investigation, the Investigating Officer filed a requisition before the court for issuance of warrant of arrest against the petitioners and the court below vide order dated 23.1.2015 directed to issue warrant of arrest.

3. Mr. Kalyan Roy, learned counsel appearing for the petitioners submitted that the order by which warrant of arrest has been issued clearly stipulates the non-application of judicial mind of the court below as it was passed without following the ingredients of Section 73 of the Code as well as the mandates given by the Hon'ble Supreme Court in the case of Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, . It was also submitted that even if the petitioners have committed any offence which are non-bailable in nature, the court at the first instance has to issue summons and it appears from the order sheet of the court below enclosed with this writ application that no summon was issued or any step was taken by the Investigating Officer before praying for issuance of non-bailable warrant. Hence, the order impugned is fit to be quashed.

4. Contrary to the aforesaid submissions, learned counsel representing the State seriously contended that as the petitioners were evading their arrest, the requisition was filed by the Investigating Officer for issuance of warrant of arrest and it is wrong to say that order impugned lacks the application of judicial mind.

5. Having heard the counsels and after going through the records of the case and specially the order-sheet of the court below which is enclosed with the writ application, I find that the learned court below without applying judicial mind in a mechanical way passed the order of issuance of warrant. The F.I.R. of this case was received in the Court of A.C.J.M., Bermo at Tenughat, Bokaro on 14.11.2014 and only on the next date i.e. 23.1.2015 the Investigating Officer filed a requisition for issuance of warrant of arrest against the accused persons which was allowed. In the case of Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, , the Hon'ble Supreme Court while dealing with the same 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 bailable 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 F.I.R. has not been filed with an oblique motive.

54. In complaint cases, at the first instance, the court should direct serving of the summons along with 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 court's 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 issuing 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 straightjacket 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 likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided."

6. From bare reading of the mandates given in the aforesaid case, it is clear that since the execution of a non-bailable warrant directly involves the 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 and such power has to be exercised judiciously and not in a mechanical way considering the nature and seriousness of the offence involved.

7. In view of the above discussions, I am constrained to hold that the court below has passed the order impugned in a mechanical way without complying its judicial mind and even the order do not reflect that the mandates given by the Hon'ble Supreme Court have been followed. Regard being had to the facts and circumstances enumerated above, I find merit in this writ application. It is, accordingly, allowed and the order dated 23.1.2015, by which warrant of arrest was issued is, hereby, quashed. The court below is directed to issue summon

against the petitioners for their appearance instead of non-bailable warrant which were ordered to be issued against them.