
(2013) 05 JH CK 0049
In the Jharkhand High Court
Case No : Cr. M.P. No. 897 of 2013

Md. Abdul Manan Ansari @ Abdul Manan Ansari	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision : 01-05-2013

Acts Referred:

Citation : (2013) 05 JH CK 0049

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—This application has been filed for quashing of the FIR but during pendency of this application, orders have been passed for issuance of warrant of arrest as well as processes under Sections 82 and 83 of the Code of Criminal Procedure. Those orders have been challenged by way of this interlocutory application and, therefore, prayer made in the interlocutory application be allowed to be incorporated in the main application. The prayer made in the interlocutory application is, hereby, allowed.

2. Let the aforesaid I.A. form part of the main application.

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3. Learned counsel appearing for the petitioner submits that though in this application, prayer has been made for quashing of the first information report as well as quashing of the orders under which warrant of arrest, processes under Sections 82 and 83 Cr.P.C. have been issued against the petitioner but presently the petitioner would confine his prayer which relates to quashing of the orders under which warrant of arrest and processes have been ordered to be issued against the petitioner.

4. Learned counsel appearing for the petitioner submits that a case was registered against the petitioner when pieces of stone were found in the

premises of the crusher unit belonging to this petitioner and those pieces of stone, according to the case of the prosecution, have been brought, after getting it extracted illegally. Thereafter, the matter was taken up for investigation. During investigation, a requisition was submitted before the court by the I.O. wherein simply it is stated that warrant of arrest is necessary. On such requisition, an order was passed on 21.02.2013 whereby warrant of arrest was ordered to be issued, which itself is bad as it is not in consonance of the provision as contained in Section 73 Cr.P.C. Consequently, any order, subsequently, passed for issuance of processes under Sections 82 and 83 also becomes bad.

5. In the context of the submission advanced on behalf of the parties, the provision of Section 73 of the Code of Criminal Procedure gets attracted, 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 be nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken u/s 71.

6. From bare perusal of the section, it is manifest that it confers a power upon the Magistrate to issue warrant for arrest of three classes of person, namely, escaped convict (ii) a proclaimed offender and (iii) a person who is accused of a non-bailable offence and is evading arrest.

7. Their Lordships in a case of State through C.B.I. Vs. Dawood Ibrahim Kaskar and others, taking into consideration the aforesaid provision as enshrined u/s 73 of the Code of Criminal Procedure and also recommendation of Law Commission in its 41st report did observe at paragraph 20 of the said judgment 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 or 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 u/s 73 and thereafter those relating to proclamation an attachment. In such an eventuality, the Magistrate can legitimately exercise his powers u/s 73 for the person to be apprehended is "accused of a non-bailable offence and is evading arrest."

8. 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.

9. While holding so, it was also observed that warrant of arrest cannot be issued only for helping and assisting the prosecution/police investigation.

10. Keeping in view the proposition laid down by the Hon"ble Supreme Court, the order under which warrant of arrest had been issued certainly appears to be bad. Consequently, any further order for issuance of processes under Sections 82 and 83 Cr.P.C. also becomes bad.

11. Accordingly, orders dated 21.02.2013 and 07.03.2013 are hereby set aside. In the result, this application stands allowed but in part.