

(2011) 03 JH CK 0111
In the Jharkhand High Court
Case No : Criminal M.P. 364 of 2011

Mithilesh Kumar and Lalan Bihari Sharan	APPELLANT
Vs	
The State of Jharkhand and Another	RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 437, 482, 82, 83
Penal Code, 1860 (IPC) — Section 409, 420

Citation : (2011) 2 JCR 560

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The Petitioners have invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashment of the orders dated 28.9.1999 and 6.9.2000 passed by Shri S.K. Sinha, Judicial Magistrate, Seraikalla in connection with G.R. No. 175 of 1992 by which permanent warrant of arrest has been directed to be issued against the Petitioners.

2. The Petitioners were engineers in the department of Fishery, Government of Bihar posted at Ranchi and Chaibasa respectively at the relevant time against whom a case was instituted under Sections 409/420 of the Indian Penal Code and they were admitted to anticipatory bail by the order of the Sessions Judge, Singhbhum West at Chaibassa in B.P. No. 56A/1992 on 7.5.1992.

3. Mr. M.K. Dey, the learned Sr. Counsel, appearing for the Petitioners submitted that after submission of chargesheet u/s 173 Code of Criminal Procedure no notice was ever served upon either of them. With reference to the order dated 28.9.1999, the learned Counsel submitted that though service of summons which were sent to the Petitioners were not received in the court but their bail bonds were cancelled and non-bailable warrant of arrest was directed to be issued against them. The records of the case was transferred to the court of the Judicial Magistrate. The order dated 24.7.2000 indicated that without waiting for the

execution report of the non-bailable warrants of arrest the court directed for issuance of processes under Sections 82/83 of the Code of Criminal Procedure against them and by the order dated 6.9.2000 the learned Judicial Magistrate observed:

Accused person is absent. It appears from the case record that this is a case of the year 1991 and inspite of the issue of process the accused person neither appeared nor brought up before the court. Hence it is undesirable to keep the record pending for the appearance of the accused persons.

Hence the accused person are declared absconder O/C to issue permanent warrants of arrest and send the record to the record room.

4. The learned Sr. counsel Mr. Dey assailing the order submitted that such order was not maintainable in the eyes of law as no opportunity was given to them either by service of summons or execution of warrant of arrest or the processes of under Sections 82 and 83 of the Code of Criminal Procedure to appear in the court, but contrary to that permanent warrant of arrest were directed to be issued against them. Finally the learned Counsel submitted that the Petitioners were ready to surrender but they need certain protection of the court in view of the fact that they were not informed but permanent warrants of arrest have been issued against them.

5. Heard the learned A.P.P for the State.

6. Having regard to the facts and circumstances of the case I find that at no point of time notice was ever served upon the Petitioners or any process including warrant of arrest could be executed against the Petitioners and without wait the court on erroneous consideration issued permanent warrants against the Petitioners which is unsustainable in law. Accordingly, orders impugned dated 28.9.199 & 6.9.2000 are set aside and the Petitioners are directed to surrender within 15 days of this order. In the event of their surrender within the time frame and presentation of a petition u/s 437 of Code of Criminal Procedure in the court concerned, it shall be considered on the ground that at no point of time summons or any other process was ever served upon them.

7. With the aforesaid observation this Cr. M.P is allowed.