

(2006) 08 PAT CK 0086

In the Patna High Court

Case No : Criminal Miscellaneous No. 30965 of 2006

Naresh Mandal

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 21-08-2006

Acts Referred:

Arms Act, 1959 — Section 25(1B), 26, 35
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2006) 4 PLJR 335

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

I.P. Singh, J.—This application filed u/s 482 of the Code of Criminal Procedure, 1973 (in short the Code) is directed against the order dated 1.7.2006 (Annexure-7) passed by Sri R.N. Tiwari, Chief Judicial Magistrate, Katihar in G. R. No. 125 of 2006 arising out of Amdabad P.S. Case No. 7. of 2006 whereby and whereunder the learned Magistrate was pleased to reject the petition dated 21.6.2006 filed by the Petitioner for staying the execution of non-bailable warrant of arrest issued against him on 13.5.2006 as also for recalling the order of the said date.

2. From the record it appears that the petitioner happens to be the informant in the above mentioned case which was instituted on 30.1.2006 u/s 25(1-B), 26, 35 of the Arms Act against two persons namely, Baijnath Mandal and Dilip Mandal. In the F.I.R he has alleged that the informant alongwith several other persons caught hold of Baijnath Mandal while Dilip Mandal fled away. On search from the person of Baijnath Mandal a country made pistol was recovered from his possession with a cartridge loaded therein. Another cartridge was recovered from the right pocket of his trouser Baijnath Mandal was brought to Amdabad police station where F.I.R. (Annexure-1) was registered against him under Sections 25(1-B), 26 and 35 of the Arms Act. A seizure list was also prepared showing the

recovery of the country mode pistol with two cartridges in presence of two witnesses who put their signature on the seizure list. Accused Baijnath Mandal was taken into custody by the police. He moved before the Chief Judicial Magistrate, Katihar for grant of bail which was refused. Apprehending some foul play the petitioner (informant) filed a protest petition on 6.2.2006 against the police since he feared that the police may submit a final form in the case in place of the charge sheet.

3. The case was supervised by the Sub Divisional Police Officer, Manihari who submitted his supervision note dated 12.2.2006 (Annexure-5). The Superintendent of Police, Katihar also supervised the case and came to the conclusion that the fire arms recovered in the case did not belong to the accused Baijnath Mandal rather the same belonged to the informant himself who was guilty of the offences under the sections of the Arms Act as mentioned above. He directed the Investigating Officer to arrest the informant-petitioner finding the case true against him under Sections 25(1-B) read with Section 26 of the Arms Act. He also directed to take steps for the release of accused Baijnath Mandal. On 27.3. 2006 the investigating Officer filed a petition before the Court of the learned Chief Judicial Magistrate, Katihar praying to issue warrant of arrest against the informant and the learned Magistrate without proper application of judicial mind issued warrant of arrest against the petitioner in a mechanical manner. When the petitioner came to learn about it he filed a petition on 21.6.2006 praying therein to recall the order dated 27.3.2006 and to stay the warrant of arrest issued against him. However, by the impugned order, the learned Chief Judicial Magistrate rejected the prayer of the petitioner finding that as per the supervision note of the Superintendent of Police, Katihar it was the petitioner who was responsible for the recovery of the fire arms.

4. This order of the learned Magistrate has got no foundation in law. It has to be noticed that still the police is investigating the case and no final form has been submitted. The petitioner happens to be the informant in the case and no criminal case under the Arms Act has been instituted against him on the basis of which any warrant of arrest could have been issued. It further appears that the learned Magistrate has wrongly relied on the alleged occurrence dated 18.1.2006 in which it is alleged that the brother of the informant had tried to commit rape on the wife of one Hari Mandal. The Investigating Officer should have submitted the charge sheet against the accused Baijnath Mandal of the case. Instead of that he has prayed for issue of warrant of arrest against the present petitioner and on the basis of which the learned Magistrate without applying his mind has ordered for the issue of warrant of arrest and has refused to recall or stay the same. Under these circumstances it has been prayed that the impugned order dated 1.7.2006 (Annexure-7) be set aside.

5. The parties have been heard at length on the various submissions made by them in respect of this case. Before proceeding any further I would like to state the admitted facts of the cases of the parties. It is not in dispute that the present

petitioner had lodged the F.I.R. against accused Baijnath Mandal in this case. Also it is not in dispute that the fire arms and live cartridges were recovered from the possession of Baijnath Mandal in presence of the police and the seizure list witnesses for which a seizure list was prepared bearing their signatures. Also it is not in dispute that any case for an attempted rape on the wife of one Hari Mandal (as alleged) was instituted with the police or in the court. Further it is important to remember in this connection that the police has alleged that the fire arms produced before it belonged to the informant who was in its illegal possession. If really it was so it is not clear what prevented the police from instituting the case against him (informant) for being in an illegal possession of illegal fire arms. However, it appears that no such case was instituted against him. Still, the police, for the reasons it is known to it rushed to the court for the issue of warrant of arrest against the informant in a procedure unknown to law and the learned court of the Chief Judicial Magistrate without taking into consideration the relevant provisions of law was pleased to issue the warrant of arrest against the informant. This is not all. When the informant came before the learned Magistrate for staying the execution of warrant of arrest against him he was pleased to reject the prayer made by him. All these appeared to be extra ordinary procedure divorced from any law.

6. On behalf of the State it has been submitted that in the course of investigation it was revealed that the fire arms produced before the police belonged to the informant who was in its illegal possession. If it was so what prevented the police from instituting a case against the informant for being in illegal possession of the illegal arms before praying for the issue of warrant of arrest against the Petitioner before the court? It is well known that the proper procedure of law should have been followed even when the police concluded that the illegal fire arm belonged to the informant and not to the accused Baijnath Mandal. If really the police came to any such conclusion the allegation being cognizable in nature it should have instituted a case against the Petitioner informant before praying before the court for the issue of warrant of arrest against him. No such procedure has been followed for the reasons best known to the police and the Magistrate.

7. It appears that the Superintendent of Police who happens to be a Senior Police Officer had supervised the investigation of the case. His supervision note is available on the record is Annexure-C. He has stated that during investigation it came to light that the brother of the informant had tried to commit rape on the wife of Hari Mandal on 18.1.2006. He has admitted that no case in this regard was instituted. If really it was a case of attempted rape the police should have immediately instituted a case this being a cognizable offence. No such thing has been done as has been admitted in the supervision note of the Superintendent of Police. However, he has taken note of this fact in his supervision note and has concluded that it is on this account that this false case has been instituted against Baijnath Mandal. I am really surprised find such a thing in the supervision note of a Senior Police Officer like Superintendent of Police for which

there is no foundation in law and for which no information was lodged with the police. All these appear to be a cock and bull story.

8. Still more surprising is the fact that in the impugned order also the learned Chief Judicial Magistrate who happens to be a Senior Judicial Officer has taken notice of this fact that on 18.1.2006 the brother of the informant had tried to commit rape on the wife of Hari Mandal. It is really surprising that a Judicial Officer of his standing should have mentioned about this fact in the impugned order for which there was no foundation. If really the Supritendent of Police had reported this fact he should have imediately charged the Public Prosecutor that such story should not be seated before him for which there was no foundation. Admittedly no F.I.R. was lodged for any such attempted rape as admitted by the Suprintendent of Police himself. Under this circumstance the issue of warrant of arrest against the informant by the court does not appear to be justified. From the impugned order it appears that the informant-petitioner had simply prayed for the stay of warrant of arrest against him as also for recall of the order passed in this regard by the court. There was nothing to prevent the learned Chief Judicial Magistrate to stay the warrant of arrest issued against the petitioner even if it be conceded that a subordinate criminal court has got no power in Law to recall an order passed by him. The learned Chief Judicial Magistrate has even ignored the fact that much earlier a protest petition against the police was also filed on behalf of the informant since he apprehended that the police will not properly conduct the case and submit the final report in it. These appeared sufficient grounds for allowing the prayer of the informant for staying the warrant of arrest issued against him. However, the learned Chief Judicial Magistrate for reasons best known to him has rejected the prayer of the informant to stay the warrant of arrest issued against him. How could a warrant of arrest be issued against the informant when no cast was instituted against him? The entire procedure followed in this case shows utter lack of judicial propriety both by the police as well as by the Magistrate.

9. In view of above this application is allowed and the impugned order dated 1.7.2006 is quashed. Further the warrant of arrest issued against the petitioner is recalled and no coercive action shall be taken against the petitioner.