
(2012) 06 PAT CK 0005
In the Patna High Court
Case No : Cr. Writ No. 571 of 2012

Nirmaljit Singh Narula @ Nirmal Baba	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 22-06-2012

Acts Referred:

Citation : (2012) 06 PAT CK 0005

Judgement

Ashwani Kumar Singh, J.—Heard Mr. Bindhyachal Singh, learned counsel for the petitioner and Mr. Devendra Kumar Sinha, learned Senior Advocate appearing on behalf of the State. The petitioner has made two prayers in the writ petition. The first prayer is to restrain the respondents from arresting him in connection with Forbesganj P.S. Case No. 154 of 2012 and the second prayer is to set aside the warrant of arrest dated 18.5.2012 issued by the learned Chief Judicial Magistrate, Araria.

2. One Rakesh Kumar Singh (respondent no. 4) submitted a written information to Forbesganj Police Station on 21.4.2012 on the basis of which, the aforesaid F.I.R. was registered under Sections 417 and 420 of the Indian Penal Code and investigation was taken up.

3. It has been alleged in the written report filed on behalf of the informant that he is a privately employed person earning a measly sum of Rs. 3,000/- per mensem and on being propelled by his faith in the petitioner and hoping for financial gains had deposited a total sum of Rs. 1,000/- "dasvand" (tenth part of earnings) in three installments in the publicized Bank account of Punjab National Bank standing in the name of the petitioner. The informant has alleged that as he failed to derive any financial gains or fortune and subsequently having come to know that the petitioner has duped several persons all over the country, he felt duped by the petitioner in the name of religion and thus an information in this regard was made to the police.

4. The F.I.R. was received in the court on 23.4.2012.

5. The petitioner has brought on record two requisitions submitted by the police seeking warrant of arrest against the petitioner. The first application seeking warrant was filed on 23.4.2012 itself, the date on which the F.I.R. reached the Court. In the first application it is stated that the petitioner who is a named accused in the case is residing at Delhi and in order to arrest him, the police wanted to go to Delhi for which a warrant of arrest was necessary as in absence of a warrant of arrest, it would not be possible to arrest him. At the foot of the requisition, it has been noted that the petitioner is a named accused of the F.I.R. and from the statement of the informant and witnesses recorded in course of investigation as also from the documents available, the occurrence seems to be true and there is sufficient material on the basis of which charge-sheet may be submitted against the petitioner.

6. The second requisition is dated 28.4.2012. The contents therein are nothing but the repetition of facts stated in the first application dated 23.4.2012.

7. The learned C.J.M., Araria by his order dated 18.5.2012 allowed the prayer made by the Investigating Officer and directed for issuance of warrant of arrest against the petitioner. The impugned order dated 18.5.2012 goes to show that before the order was passed, the Investigating Officer had produced a photocopy of the supervision note of the supervising officer of the case and being satisfied with the same, the order impugned was passed.

8. It is submitted on behalf of the petitioner that the F.I.R. does not disclose any cognizable offence which demands arrest to follow and the law does not obligates the police to arrest simply because a cognizable offence is alleged. The petitioner is a highly revered spiritual guide, renowned over the world for his spiritual discourses.

9. He further submits that at no point of time, he was ever served with any notice to appear before the police not did the police ever visited the premises of the petitioner for the purposes of investigating the veracity of the F.I.R. The applications seeking warrant of arrest were filed almost simultaneously after the institution of the F.I.R. In law, arrest is not made simply because the F.I.R. has been registered unless there is a justification for arrest which is non-existent in the present case.

10. Learned counsel for the petitioner further submits that the learned Magistrate while issuing the warrant of arrest has failed to notice the statutory provisions prescribed under Sections 73 and 78 of the Code of Criminal Procedure (hereinafter referred to as the "Code"). There was no valid reason or justification stated in the applications submitted by the Investigating Officer on the basis of which learned Chief Judicial Magistrate, Araria could have allowed the prayer and directed for issuance of warrant of arrest against the petitioner.

11. It has been further submitted that the order of warrant of arrest is illegal. It has been passed contrary to the provisions of Section 78 of the Code.

12. A counter affidavit has been filed on behalf of respondent nos. 2 and 3. The stand of the respondents in the counter affidavit is that the police has acted without any prejudices and in accordance with the provision made in the law. Section 420 IPC is a cognizable offence which has been disclosed in the F.I.R. and, as such, in a given circumstance a police officer can cause any person to be arrested. The process of causing the accused to be arrested were set in motion by filing application for issuance of warrant of arrest in the court of the learned Chief Judicial Magistrate, Araria. The F.I.R. does disclose commission of cognizable offence and the police collected evidence in this regard during investigation conducted at local level and got sufficient materials and evidences in connection with the alleged offence.

13. Sri Devendra Kumar Sinha, learned senior counsel, appearing on behalf of the State submits that there was absolutely no mala fide intention on the part of the police in filing applications seeking warrant of arrest against the petitioner.

14. He further submits that the police did not opt to send notice, etc. to the petitioner to avoid delay in order to complete the investigation.

15. Learned senior counsel for the State further submits that Section 41A of the Code mentions the word "may" and thus, it was not mandatorily required to issue notice to the petitioner first before seeking a warrant of arrest.

16. Sri D.K. Sinha, learned senior counsel submits that even without a warrant of arrest the police or the investigating agency has got powers to arrest an accused, who is wanted in connection with a cognizable offence and the warrant of arrest was sought only by way of caution.

17. Having heard the parties at length so far as the first prayer of the petitioner is concerned, in my view that cannot be allowed. Once the petitioner has been made an accused in a cognizable offence, it is for the police to see as to whether his arrest is necessary or not. In case, the arrest is found imperative, according to the facts of the case, in that event, the arresting officer may take appropriate steps in accordance with law in that view of matter, so far as first prayer of the petitioner to restrain the respondents from arresting him in connection with Forbesganj P.S. Case No. 154 of 2012 is concerned, is rejected.

18. Now the Court has to see as to whether the second prayer made on behalf of the petitioner seeking quashing of the warrant of arrest dated 18.5.2012 can be allowed or not.

19. In order to examine this issue, it would be relevant to consider the ambit and scope of Sections 73 and 78 of the Code of Criminal Procedure, which reads as under:--

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 within the warrant to the 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.

78. Warrant forwarded for execution outside jurisdiction.-

(1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided.

(2) The Court issuing a warrant under sub-section (1) shall forward, alongwith the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting u/s 81 to decide whether bail should or should not be granted to the person.

20. Section 73 of the Code of Criminal Procedure is of general application and that in course of investigation, a Court can issue a warrant in exercise of power thereunder. The Chief Judicial Magistrate or a Judicial Magistrate of the First Class may direct a warrant to any person within his local jurisdiction u/s 73 of the Code.

21. Section 78 of the Code deals with the provision when a warrant is to be executed outside the local jurisdiction or the court issuing it. Section 78 enables the Magistrate to forward the warrant to the authorities of the district where the warrant is to be executed.

22. Section 73(1) of the Code says that the Chief Judicial Magistrate or a Magistrate of 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 an accused of a non-bailable offence and is evading arrest. The petitioner admittedly is neither an escaped convict nor a proclaimed offender. Thus, in the present case, out of the three eventualities under which a warrant of arrest can be issued, two are non-existent.

23. It has been submitted in the requisition filed before learned Chief Judicial Magistrate, Araria that the petitioner is an accused of a non-bailable offence and

is residing at Delhi and it would be difficult to arrest him without warrant. In the requisitions submitted by the Investigating Officer. It has nowhere been stated that the accused is evading arrest.

24. As noted above, there are only three eventualities mentioned u/s 73(1) when the Chief Judicial Magistrate or a Magistrate of First Class is empowered to issue warrant of arrest. Since the first two conditions, i.e., "escaped convict" and "proclaimed offender" do not apply in the present case, the learned Chief Judicial Magistrate, Araria could have still passed the impugned order directing issuance of warrant of arrest against the petitioner by exercising his jurisdiction only if there could have been material to show that he was evading arrest. Apparently, in the present case, there was no material before him, on the basis of which, he could have inferred that the petitioner was being accused of a non-bailable offence was evading arrest.

25. If any person accused of a non-bailable offence is not evading arrest then, he can certainly be arrested by the police u/s 41 of the Code of Criminal Procedure and a warrant u/s 73 Cr.P.C. would not be required against him.

26. In that view of the matter, I find that the ingredients for issuance of warrant of arrest were not made out in the requisitions made by the police. It appears that the learned Chief Judicial Magistrate, Araria failed to apply his judicial mind before allowing the prayer of the investigating agency for issuance of warrant of arrest against the petitioner and the order impugned seems to have been passed mechanically.

27. In the result, the impugned order dated 18.5.2012, issuing warrant of arrest against the petitioner cannot be sustained and accordingly the same is set aside. The application is allowed so far as second prayer of the petitioner is concerned.