

(2011) 09 JH CK 0070

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 26 of 2011

Ramchandra Sao @ Ramchandra Pd. Sahu, Punam Kumari
and Chintamani Devi

APPELLANT

Vs

State of Jharkhand and Ashish Kumar

RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Citation : (2011) 4 JCR 349

Hon'ble Judges : Prakash Tatia, Acting C.J.

Bench : Single Bench

Judgement

Prakash Tatia, A.C.J.

1. The Petitioners approached this Court to challenge the order dated 14th November, 2008 passed by the Judicial Magistrate, 1st Class, Giridih in T.R. No. 19 of 2010, G.R. No. 537 of 2006, Dumri P.S. Case No. 35 of 2006 (State v. Ram Chandra Sao).

2. Learned Counsel for the Petitioners submitted that the order dated 14th November, 2008 is illegal as by that order, the learned Trial Court has cancelled the bail bonds and ordered for issuance of non-bail able warrant as well as notice to the sureties. Learned Counsel relied upon the order passed on 20.08.2010, by this Court in W.P. (Cr.) No. 111 of 2010, wherein this issue has been considered where also the Magistrate ordered that "bail bond" of the accused is cancelled and non-bail able warrant should be issued. This Court observed in the said case decided on 20.08.2010 that correct order to be passed is that "bail" is cancelled. This Court taking a liberal view in W.P. (Cr.) No. 337 of 2010 observed that Judicial Magistrate without application of mind, while canceling the bail, also cancelled the bail bonds.

3. The bail bond is submitted giving a guarantee by the accused to remain present in Court in terms of the bonds given by him with conditions stipulated in the bond by the accused as well as by the sureties. In case, because of the

absence of the accused, bail bonds are cancelled then nothing can be executed whereas upon cancellation of bail, the bonds becomes executable.

4. The Trial Court has passed the order without application of mind in spite of decision of this Court delivered in W.P.(Cr.) No. 111 of 2010 (Abhishek Kumar Gupta v. The State of Jharkhand and Anr.) Decided on 20.08. 2010 and W.P. (Cr.) No. 337 Of 2010 (Bhagwan @ Barun Kumar Bose @ Barun Bose v. The State of Jharkhand and Ors.) Decided on 8.07.2011.

5. It appears that the Judicial Magistrates are passing orders of such a nature which are absolutely illegal resulting into unnecessary litigation and filing of writ petitions in this Court for cancellation of such orders where the accused absented himself from appearing in Court and violated the conditions of bail bonds.

6. Therefore, in this case also, the order of cancellation of bail bonds is set aside and the Trial Court is directed to be careful in future in passing order in case of absence of the accused where only order could be passed of cancellation of bail and not cancellation of bail bonds and after cancellation of bail only the process of non-bail able warrant can be issued and notices can be given to the sureties. Here in the order dated 14th November, 2008 after cancellation of the bail bonds the Trial Court has issued notices to the sureties. Therefore, the Trial Court has, by the same order, cancelled the bail bonds and also sought to execute the bonds which could not have been done.

7. In view of the above reasons, this writ petition is allowed and the order of cancellation of bail bonds is set aside and the accused persons are permitted to put their appearance before the Trial Court on or before 26th September, 2011 and may mark their attendance in compliance of the conditions of the earlier bail bonds which have been illegally cancelled by order dated 14th November, 2008. As the order of cancellation of bail bonds is set aside, the bail bonds stand revived.

8. Let a copy of this order be sent to all the Judicial Magistrate in the State of Jharkhand so that they may follow the procedure properly in the matter of absence of the accused and pass appropriate order.

9. Let a copy of this order be sent to the Trial Court and the Petitioner is free to submit an application before the Trial Court along with the certified copy of this order.