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**(2011) 08 PAT CK 0123**  
**In the Patna High Court**  
**Case No : Criminal WJC No. 264 of 2011**

Rashmi Jyoti and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 25-08-2011

**Acts Referred:**

Copyright Act, 1957 — Section 63, 64, 68  
Criminal Procedure Code, 1973 (CrPC) — Section 154, 157, 157(1), 41, 41(A)  
Penal Code, 1860 (IPC) — Section 406, 409, 420, 467, 468

**Citation :** (2012) 1 PLJR 650

**Hon'ble Judges :** Shailesh Kumar Sinha, J

**Bench :** Single Bench

**Advocate :** Birendra Kumar Sinha, Shakeel Ahmad Khan, Ashok Kumar Jha, Indrajeet Bhushan, Manish Kumar, Krishna Ranjan, Kumar Kaushik, Ashar Mustafa, Praveen Kumar, Harish Kumar, Pushpendra Kumar Singh, Omkar Kumar, Dr. Bidhu Ranjan and Binod Kumar, Ramakant Sharma, Narendra Kuma, for the Appellant; Amarnath Deo, Rishi Raj Sinha, Manikant Mishra, N.K. Singh, Krishna Murari Prasad, Shyameshwar Kumar Singh, Yashwant Kumar Chaman, Lalan Kumar, Kinkar Kumar, Rajeev Shekhar, Gopal Krishna, Rakesh Kumar and Smt. Nilu Agrawal ., for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.K. Sinha, J.—In the above batch of writ applications the challenge is to a common order dated 23rd February, 2011 of Chief Judicial Magistrate, Sitamarhi issuing non-bailable warrant of arrest against the accused persons including petitioners on the requisition of the Investigating Officer of the Sitamarhi Police Station Case No. 595 of 2010, registered for the alleged offences under Sections 406, 409, 420, 467, 468 & 471 of the Indian Penal Code and Sections 63, 64 & 68 of the Copy Rights Act. Since facts in all the above writ application are more or less similar, as such, for the sake of convenience the facts of Cr.W.J.C. No. 275 of 2011 (Dr. Kumkum Sinha & Ors. vs. The State of Bihar) are referred below wherever necessary.

2. The aforesaid order dated 23.2.2011 is assailed inter alia on the following grounds:-

(I) Warrant for arrest could not be issued mechanically as also without application of judicial mind and unless any of the three preconditions enumerated in sub-section (1) of Section 73 of the Code of Criminal Procedure (hereinafter referred to as the "Code") are available.

(II) The warrant of arrest could not be issued in aid of investigation.

3. The State has filed counter affidavit and opposes the writ application inter alia on the following grounds:-

(I) The writ application assailing the impugned order is not maintainable ignoring the statutory provisions under the Code especially in view of involvement of serious disputed questions of facts and also in the circumstances leading to the lodging of the first information report in question.

(II) Investigation of a criminal case involves taking different measures including the arrest and also discovery of relevant facts/materials for collection of evidence to find out the truthfulness of the allegations. The Investigating Officer during investigation is entitled in law to adopt such measures including arrest as per necessity.

(III) The impugned order has been passed considering the facts/materials including memo of evidence against each of the persons including the petitioners in the requisition submitted by the police for issuance of warrant of arrest.

4. The case of the State is that the requisition for issuance of warrant of arrest necessitated for the reason that the petitioners are the elected public representatives being Mukhiyas of different Panchayats all over the district of Sitamarhi against whom investigation needs to be done in depth without delay and as such decision to arrest called for more care and caution coupled with the fact that pursuant to the notice issued by the investigating officer they did not cooperate fully since they avoided to produce the relevant documents/materials with respect to the purchase of solar lights in question involving misappropriation of huge public money. Therefore, taking into consideration the facts and circumstances, in the opinion of the investigating officer, it was proper to take all measures for the discovery of the relevant materials/documents including the arrest which the Investigating Officer was entitled in the light of the provisions of sub-section (1) of Section 157 of the Code.

5. The prosecution case, in short, is that on 30.10.2010 the investigating officer of the present case received confidential information that one Ashok Kumar son of Sri Sagar Sharma, from whose house illegal arms were recovered, used to supply spurious solar lights with the help of one Dipendra Mishra. When the said Dipendra Mishra was questioned, he informed that he alongwith Ashok Kumar used to supply spurious solar lights for the past 3-4 years to various gram panchayats. They did not have any VAT registration. Ashok Kumar had got them

registered as "Shiva Enterprise". They procured spurious solar lights from one Magadh Solar Light, Chiraiyatar, Patna. The spurious solar lights used to cost lesser and the profit thus made was distributed between the Mukhiya, Panchayat Secretary and other officers. By such spurious supplies which was rampant in which crores of public money was misappropriated by committing the alleged offences.

6. Based on the above information, the police searched the house of Ashok Kumar and seized various documents and on the basis of those documents Ashok Kumar, Dipendra Mishra and other Mukhiyas of different Panchayats in the district of Sitamarhi were made accused in the present case.

7. The common submissions on behalf of the petitioners that the course adopted by the Investigating Officer for arresting all the accused persons who were the Mukhiyas of their concerned Gram Panchayats, by seeking warrant of arrest against them without considering the necessity and justification for such recourse is not permissible in law. It is further submitted that they remained co-operative all along to the Investigating Officer as and when required by furnishing the necessary information/relevant documents in their possession. The warrant of arrest was actuated with malice to prevent them from contesting the ensuing Panchayat Election for Mukhiya, the notification of which was already published.

8. Besides assailing the action of the Investigating Officer the petitioners submitted that the learned Chief Judicial Magistrate while issuing non-bailable warrant of arrest also committed serious error of law by not considering the conditions precedent for issuing such warrant of arrest as embodied in sub-section (1) of Section 73 of the Code which requires in law that warrant of arrest can be issued only if either of the three pre-requisite conditions are fulfilled i.e. the person against whom the warrant of arrest is being issued either he should be escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest. As such, issuance of warrant of arrest being contrary to law deserves to be quashed.

9. On the other hand submission on behalf of the State is to the effect that these petitioners were seriously involved in commission of the alleged offence while making the payment for supply of spurious" solar lights knowingly for their ulterior pecuniary gain causing huge loss to the public exchequer as the solar lights in question were of a duplicate material whereas the payments were made for the original having a wide difference of price.

10. Mr. Amarnath Deo, learned Standing Counsel No. XXVI leading the argument on behalf of the State submits that the petitioners were not cooperating in the investigation of the case by concealing the relevant information/documents, and as such, in the opinion of the Investigating Officer their arrest was felt necessary, however, since large number of persons including the petitioners being public representatives were required to be arrested, therefore, obtaining the warrant of arrest was the proper course. Accordingly, the requisition for issuance of warrant

of arrest was filed in the Court stating all the relevant details with memo of evidence against all the accused persons for consideration of the Court before issuance of the warrant of arrest.

11. It was further submitted that on perusal of the impugned order it would appear that the learned Chief Judicial Magistrate upon due consideration to the requisition of the Investigating Officer passed the order for issuance of warrant of arrest. It is submitted that the same is legal, valid and justified in law, as such, all the writ applications deserves to be dismissed.

12. In reply, learned counsel for the petitioners drawn the attention of the Court to the provisions of Section 41(a)(b)(i) and Section 55 of the Code for the proposition that the Investigating Officer instead of seeking warrant of arrest could have sent the requisition for arrest to another police officer, and as such, the submission of the State that it was necessary to seek the warrant of arrest is not justified in law.

13. Before considering the rival submissions of the parties, the relevant provisions of Sections 41A, 72, 73(1), 74 & 157(1) of the Code are quoted below for ready reference:-

#### Section 41A

(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of subsection (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at Such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

#### Section 72

Warrants to whom directed.-(1) A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When a warrant is directed to more officer or persons than one, it may be

executed by all, or by any one or more of them.

#### Sub-section (1) of Section 73

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.

#### Section 74

Warrant directed to police officer.-

A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

#### Extract of Sub-Section (1) of Section 157

If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered u/s 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order prescribe in this behalf, to proceed, to the spot to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender.

14. On perusal of the aforesaid statutory provisions it would appear that a person, who is an accused of a cognizable offence, could be arrested by the police either on its own or under the orders of the Court on basis of the warrant of arrest.

15. The pre-dominant consideration for arrest under either of the mode is the necessity of arrest either for appearance in the Court or required in course of investigation.

16. In this connection, it would appear that on lodging of the first information report with respect to a cognizable offence in terms of Section 154 of the Code the officer in charge of such police station if he reasonably suspects the commission of the alleged offence disclosed in the information received shall proceed in person or depute any eligible sub-ordinate officer to proceed to the spot to investigate the facts and circumstances of the case and if necessary, to take such measures for the discovery and arrest of the offender in terms of the provisions of Section 157(1) of the Code.

17. From the above, it is manifest that the investigating officer is empowered under the aforesaid statutory provision to take all measures for discovery and arrest of the offender in course of the investigation of the case, if necessary. An

accused has no say and is not entitled to choose as to who should be the investigating agency and measures to be adopted to investigate the case permitted under law. Reference may be made to the decision of the Apex Court in the case of Central Bureau of Investigation & Anr. vs. Rajesh Gandhi & Anr. as reported in AIR 1997 Supreme Court 93 (Paragraph-8). In the case in hand, the investigating officer stating the reasons for seeking the warrant of arrest made the requisition dated 18.02.2011 with memo of evidence against all separately (Annexure-4) as referred to in the foregoing paragraphs before the learned Chief Judicial Magistrate, Sitamarhi whereupon on consideration of the above on being satisfied, directed for issuance of the non-bailable warrant of arrest vide order dated 23.2.2011 i.e. the impugned order.

18. There is another controversy between the parties. The stand of the petitioners are that the warrant of arrest has been issued in terms of the provisions of sub-section (1) of Section 73 of the Code whereas the stand of the State that the warrant in question is purported to have been issued in terms of sub-section (1) of Section 72 read with Section 74 of the Code. Since the warrant under sub-section (1) of Section 73 of the Code provides for issuance of warrant to a private person where no police officer is immediately available for the execution of the warrant of arrest.

19. In the opinion of the Court, the very purpose of issuance of warrant of arrest is to secure the appearance of the accused persons in the Court as also to effect their arrest if required during investigation. Reference may be made to the decision in the case of State through CBI vs. Dawood Ibrahim Kaskar and Others as reported in 1997 Supreme Court Cases (Cr.) 636 (Paragraph 22) which is quoted below:-

Another factor which clearly indicates that Section 73 of the Code gives a power to the Magistrate to issue warrant of arrest and that too during investigation is evident from the provisions of Part C of Chapter VI of the Code, which we have earlier adverted to. Needless to say the provisions of proclamation and attachment as envisaged therein is to compel the appearance of a person who is evading arrest. Now, the power of issuing a proclamation u/s 82 (quoted earlier) can be exercised by a Court only in respect of a person "against whom a warrant has been issued by it". In other words, unless the Court issues a warrant the provisions of Section 82, and the other sections that follow in that part, cannot be invoked in a situation where in spite of its best efforts the police cannot arrest a person u/s 41. Resultantly, if it has to take the coercive measures for the apprehension of such a person it has to approach the Court to issue-warrant of arrest u/s 73; and if need be to invoke the provisions of Part C of Chapter VI. [Section 8(3) in case the person is accused of an offence under TADA.]

Therefore, in case the petitioners have come to know that they are required by the investigating officer in course of the investigation, they are required in law to appear before the police officer investigating the case even without receiving any notice in this regard from the investigating officer. However, in case they

apprehend their arrest it is always open to the person apprehending his arrest to apply for such bail in terms of the provisions of 438(1) of the Code, but in no case, petitioners could have avoided the investigation. It has been stated in the counter affidavit on behalf of the State to the effect that the petitioners were not cooperating fully, i.e. either they were withholding information or withholding the relevant documents to unreveal the truth.

20. Notwithstanding the above and without going into detail, considering the submissions of the parties, it is just and proper that petitioners should co-operate in the investigation. It is open to them to apply for bail as provided under law and in case the petitioners either get pre-arrest bail or on surrender, the warrant of arrest and other processes issued against them are to be recalled. Reference may be made to a decision of the Apex Court in the case of Vimalben Ajitbhai Patel Vs. Vatslabee Ashokbhai Patel and Others, . Learned counsel for the petitioners has relied upon a decision of Apex Court in the case of Inder Goswami vs. State, as reported in 2008 (1) P.L.J.R. 82 (SC) for the proposition that the warrant of arrest being a serious matter could not be issued mechanically without application of mind as also in absence of any relevant material justifying the issuance of warrant of arrest. Here it is not a case of issuance of warrant of arrest mechanically, as on perusal of the impugned order it would appear that the warrant of arrest were issued on the consideration of the requisition submitted by the investigating officer enclosing the memo of evidence available against all the accused persons, and the learned chief Judicial Magistrate upon considering all the relevant materials on the record directed for issuance of warrant of arrest, and as such, it cannot be said that the same was issued mechanically. The impugned order as such cannot be faulted in law. That apart the law is well settled that the defect, if any, however serious has no direct bearing on the competence or the procedure relating to the cognizance or trial as held by the Apex Court in the case of Paramjit Singh @ Mithu Singh vs. State of Punjab, reported in AIR 2008 Supreme Court 441 (Paragraph 13) extract of which is quoted below:-

it is well settled that even a defect, if any, found in investigation, however serious has no direct bearing on the competence or the procedure relating to the cognizance or the trial. A defect or procedural irregularity, if any, in investigation itself cannot vitiate and nullify the trial based on such erroneous investigation.

In view of the above considerations and discussions, I do not find any merit in all the writ applications. Accordingly, all the above writ applications fail and as such are dismissed. The interim order dated 11.3.2011 stands vacated.