

(2014) 10 JH CK 0038
In the Jharkhand High Court
Case No : Cr. M.P. No. 2333 of 2014

Ravindra Kumar

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Coal Mines (Nationalisation) Act, 1973 — Section 30(ii)
Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 482
Forest Act, 1927 — Section 33
Penal Code, 1860 (IPC) — Section 414

Citation : (2014) 10 JH CK 0038

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Advocate : Sidhartha Roy, Advocate for the Appellant

Judgement

P.P. Bhatt, J.—Present criminal miscellaneous petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the entire criminal proceeding as well as FIR in connection with Mandu P.S. Case No. 226/14, corresponding to GR No. 2465/14, registered under Sections 414 of the Indian Penal Code, Section 30(ii) of the Coal Mines Act and Section 33 of the Indian Forest Act, which is now pending in the Court of Judicial Magistrate, 1st Class, Hazaribagh. It is also prayed for quashing of the order dated 10.9.2014, whereby warrant of arrest has been issued against the petitioners.

2. Heard learned counsel for the petitioners as well as learned A.P.P. appearing on behalf of the State and perused the materials placed on record.

3. Learned counsel for the petitioners, at the outset, submitted that he does not want to press the first part of the prayer and confines his prayer to the second part i.e. with respect to quashing of the order dated 10.9.2014, whereby warrant of arrest has been issued against the petitioners.

4. According to learned counsel for the petitioners, learned court-below, without

recording any satisfaction, mechanically issued the order dated 10.9.2014 and therefore, the said order is not sustainable in the eyes of law.

5. In support of his submission, learned counsel for the petitioners, has referred to and relied upon the decision, given by the coordinate Bench of this Court, dated 7.8.2014 in Cr. M.P. No. 1583 of 2014 With I.A. No. 3583 of 2014. While referring paragraph-8 of the said judgment, it is submitted that the case of the present petitioners is squarely covered by the decision of the Hon"ble Supreme Court of India in Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and Another, , wherein the law has been laid down as follows :-

"9. It needs little emphasis that since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued mechanically, but only after recording satisfaction that in the facts and circumstances of the case, it is warranted. The Courts have to be extra-cautious and careful while directing issue of non-bailable warrant, else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India. At the same time, there is no gainsaying that the welfare of an individual must yield to that of the community. Therefore, in order to maintain rule of law and to keep the society in functional harmony, it is necessary to strike a balance between an individual's rights, liberties and privileges on the one hand, and the state on the other. Indeed, it is a complex exercise. As justice Cardozo puts it "on the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice." Be that as it may, it is for the court, which is clothed with the discretion to determine whether the presence of an accused can be secured by a bailable or non bailable warrant, to strike the balance between the need of law enforcement on the one hand and the protection of the citizen from highhandedness at the hands of the law enforcement agencies on the other.-----."

(Emphasis supplied).

6. Learned A.P.P. appearing on behalf of the State opposed the present criminal miscellaneous petition and submitted that learned court-below passed the order on the application made by the concerned I.O. and therefore, there is reason to believe that learned court-below must have applied its mind on the facts narrated in the application submitted by the I.O. as the said application was decided after hearing. Learned A.P.P. tried to justify the order passed by learned court-below and submitted that there is no merit in the present criminal miscellaneous petition and the same may be rejected.

7. Considering the aforesaid rival submissions and having regard to the facts and circumstances of the present case and more particularly, on perusal of the order dated 10.9.2014, passed by the learned court-below, it appears that the learned court-below has passed the said order mechanically without recording its satisfaction, which is required to be done, in view of the decision given by the

Hon"ble Supreme Court in Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and Another, . In view of the aforesaid decision, warrant of arrest cannot be issued mechanically, but it can be issued only after recording satisfaction, in the facts and circumstances of the case. As observed in the said decision, the Courts have to be extra-cautious and careful while directing issue of non-bailable warrant. It also appears that the said decision has been followed by the co-ordinate Bench of this Court in Cr. M.P. No. 1583 of 2014 With I.A. No. 3583 of 2014.

8. Since learned counsel for the petitioners does not want to press first part of the prayer and confines his prayer to the extent of second part i.e. with respect to quashing of the order dated 10.9.2014, whereby warrant of arrest has been issued against the petitioners, this Court is of the view that in the light of the decision, referred to here-in-above, the order dated 10.9.2014 passed by the learned court-below deserves to be quashed and set aside. Accordingly, the order dated 10.9.2014 passed by the learned court-below is ordered to be quashed and set aside and the matter is remitted to the learned court-below for de novo consideration after following due process of law.

9. With the aforesaid observation and direction, this criminal miscellaneous petition is partly allowed.