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(2019) 01 JH CK 0087

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2256 Of 2016

Shahanshah Ali Khan @ Shahashah Ali Khan — APPELLANT

Vs

State Of Jharkhand — RESPONDENT

Date of Decision : 29-01-2019

Acts Referred:
Code Of Criminal Procedure, 1973 — Section 82, 83, 438

Citation : (2019) 01 JH CK 0087

Hon'ble Judges : Shree Chandrashekhar, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Sandeep Verma, Vijay Kr. Gupta, Nazia Rashid

Judgement

1. This is an application for intervention filed by Mr. Vishal Kumar Jaiswal who claims himself Director of Sri Aghoreshwar Sai Developers Pvt. Ltd., Ranchi.

2. The intervenor has pleaded that the land in question belongs to Sheila Rohatgi and it was mutated in her name. She has sold 2.80 acres land to Sri Aghoreshwar Sai Developers Pvt. Ltd., Ranchi. In this application the intervenor has reiterated the contents of the written report on the basis of which a First Information Report has been lodged. He has pleaded that the accused-Hameeda Khatoon and others have created forged deed by tampering the records kept in the office of the District sub-Registrar, Ranchi. Admittedly, he is not the informant of the case; Kotwali P.S.Case No.793 of 2015 has been registered on the basis of a written report of the District sub-Registrar, Ranchi.

3. In the aforesaid facts, the intervenor who may be a witness but not a necessary party in the present proceeding. Whether the accused-petitioner has been evading arrest or absconding is a fact which only the prosecution can answer and not the proposed intervenor.

4. Viewed thus and for the reasons indicated hereinabove, I.A. No.7721 of 2016 is dismissed, however, with liberty to the intervenor to avail of remedy, if any, as available to him at the appropriate stage.

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5. The petitioner, who has asserted that he is a government employee posted at Jharkhand Bhawan, Delhi, is aggrieved of the order dated 30.05.2016 by which non-bailable warrant of arrest has been issued and the order dated 17.09.2016 by which process under section 82 Cr.P.C has been issued against him.

6. Mr. Vijay Kr. Gupta, the learned APP states that the case is still under investigation and by virtue of an interim order passed by this Court on 28.09.2016 further steps were not taken in the matter.

7. On the written complaint of District sub-Registrar, Ranchi, Kotwali P.S.Case No.793 of 2015 was registered on 16.09.2015. The petitioner has asserted that he approached the court of Judicial Commissioner, Ranchi by filing A.B.P.No.1144 of 2016. The order dated 25.07.2016 passed by the Magistrate would indicate that "no coercive" order was passed by the Judicial Commissioner, Ranchi which was operative till that date. However, the impugned order dated 17.09.2016 records that no order of stay/no coercive step has been received in the Court of the Chief Judicial Magistrate. This is an outstanding reason given by the Chief Judicial Magistrate in its order dated 17.09.2016 for issuing process under section 82 Cr.P.C. All that the Chief Judicial Magistrate, Ranchi should have done was to verify the facts from the learned APP before issuing the process under section 82 Cr.P.C. It appears that the Investigating Officer has also not apprised the Court the complete and correct facts. The petitioners' anticipatory bail petition was dismissed on 30.08.2016 by the Judicial Commissioner, Ranchi and he moved this Court in A.B.A. No.3747 of 2016. However, the said application in view of the order dated 17.09.2016 was dismissed as not maintainable. It also appears that the learned Chief Judicial Magistrate has accepted the statement of the Investigating Officer that the accused-petitioner is evading arrest, without verifying the facts from the case-diary.

8. Section 82 Cr.P.C mandates that if the court has reasons to believe that a person against whom a warrant has been issued has been absconding or concealing himself so that the warrant could not be executed, process can be issued by the Magistrate. Issuance of process under section 82 Cr.P.C has serious consequences. In view of the judgment of the Supreme Court in "Lavesh vs. State (NCT of Delhi)" (2012) 8 SCC 730, once process under section 82/83 Cr.P.C is issued this disentitles the accused anticipatory bail under section 438 Cr.P.C. A Magistrate, thus, before issuing process under section 82 and/or section 83 Cr.P.C must apply his mind and verify the facts which should be reflected in the order issuing process under section 82/83 Cr.P.C. However, a bare perusal of the impugned order dated 17.09.2016 does not disclose application of mind by the Chief Judicial Magistrate, Ranchi. Process under section 82 Cr.P.C has been issued on mere asking of the Investigating Officer. Evidently, the procedure adopted by the Chief Judicial Magistrate cannot be countenanced in law.

9. In view of the aforesaid facts and for the reasons indicated hereinabove, the

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impugned order dated 17.09.2016 is quashed, however, no interference is warranted with the order issuing warrant of arrest.

10. In the result, Cr. M.P. No.2256 of 2016 stands allowed, to the aforesaid extent.

11. Interim order dated 28.09.2016 stands vacated.

I.A. No.9762 of 2017

12. This application has been filed for early hearing of this quash-petition.

13. In view of the order passed in Cr. M.P. No.2256 of 2016, this application has been rendered infructuous.

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