

(2019) 02 JH CK 0014

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2902 Of 2018

Shoukat Ali @ Shaukat Ali @ Soukat Ali And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 07-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 82, 83

Indian Penal Code, 1860 — Section 34, 323, 341, 379, 504, 506

Citation : (2019) 02 JH CK 0014

Hon'ble Judges : Shree Chandrashekhar, J

Bench : Single Bench

Advocate : Sanjay Kr. Pandey, G.S. Prasad

Final Decision : Allowed

Judgement

1. The petitioners seek quashing of the order dated 18.05.2017 by which bail-bonds furnished by them have been cancelled and non-bailable warrant of arrest has been issued and order dated 03.02.2018 by which processes under section 82/83 Cr.P.C have been issued against them.

2. Briefly stated, after the investigation in Jugsalai P.S. Case No.18 of 2011 which was registered on 23.02.2011 for the offence punishable under sections 341, 323, 379, 504, 506 & 34 IPC a charge-sheet was submitted and cognizance of the offence was taken on 28.05.2011. All the offences for which cognizance has been taken are bailable in nature. On their appearance both the petitioners were released on bail, however, when they failed to appear before the Magistrate on 3 consecutive dates i.e. on 16.02.2017, 21.03.2017 and 01.05.2017, on the next date of hearing i.e. on 18.05.2017 their bail-bonds were cancelled. Now, it is stated that processes under section 82/83 Cr.P.C have also been issued against them. Without recording facts of the case in detail, suffice it would be to record that by an order dated 03.02.2018 processes under section 82 and section 83 both have been issued by the same order. The opening line of section 83 Cr.P.C; after issuing process under section 82 Cr.P.C at any time process under section

83 Cr.P.C can be issued, indicate that after process under section 82 Cr.P.C has been issued process under section 83 Cr.P.C can be issued. Now doubt, in extraordinary circumstances within one day both processes can be issued but in no case these can be issued simultaneously on the same day. Exercise of powers by the Magistrate under section 82 and section 83 Cr.P.C must be founded on the subjective satisfaction of the Magistrate which the Magistrate forms on the basis of the materials produced before him. It is not that on mere asking of the investigating officer the Magistrate must issue processes under section 82 Cr.P.C or under section 83 Cr.P.C. For the aforesaid illegality in the order dated 03.02.2018, this order must go.

3. So far as sustainability of the order dated 18.05.2017 is concerned, no doubt on successive failure of the accused persons to appear before the Magistrate and, that too, at a stage when substance of accusations has to be explained to them, bail-bonds furnished by them may be cancelled.

4. However, keeping in mind the fact that the offences alleged against the petitioners are bailable in nature and the undertaking given by Mr. Sanjay Kr. Pandey, the learned counsel for the petitioners that the petitioners shall appear before the court concerned on 25.02.2019, which is the date fixed for appearance of the accused person, the impugned order dated 18.05.2017 is quashed.

5. On appearance of the petitioners, if they file an application for bail and furnish fresh bail-bonds that shall be accepted by the court concerned, if found in order.

6. In the result, Cr. M.P. No.2902 of 2018 stands allowed, however, with the aforesaid direction to the petitioners.