
(2015) 08 JH CK 0046
In the Jharkhand High Court
Case No : WP(Cr.) No. 304 of 2015

Umesh Yadav and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 73, 82, 83
Penal Code, 1860 (IPC) — Section 307, 321, 323, 324, 34

Citation : (2015) 4 JLJR 6

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : Kumar Amit and Rohit Ranjan Sinha, for the Appellant; Abhay Kumar Mishra, for the Respondent

Judgement

Ravi Nath Verma, J.—The three petitioners by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India have prayed to quash the order dated 12.5.2014 passed by learned Judicial Magistrate, whereby non-bailable warrant of arrest has been issued and also the order dated 18.8.2014 and 17.4.2015 by which process for proclamation and attachment under Sections 82 and 83 of the Code of Criminal Procedure (in short "the Code") respectively, have been issued. The factual aspects, which is relevant for the determination of the issue involved in this writ application, in short, is that at the instance of the informant Ashok Yadav, Markachp P.S. Case No. 75 of 2009 under Sections 321 /323 /324 /307 /504 /34 of the Indian Penal Code was instituted on the allegation that when on 13.5.2009 at about 7.00 p.m. he was returning to his home after taking water, the petitioners who are the accused persons with an intention to kill assaulted him. One of the accused Umesh Yadav was having Tangi in his hand, Mukesh Yadav was armed with one Chhura (knife) and Shanti Devi was having a sword in her hand and on hulla raised by the informant local people assembled there and saved his life.

2. It appears that the police after due investigation submitted charge-sheet

against co-accused Mukesh Yadav keeping the investigation pending against the two petitioners but later on after due investigation the case was found to be true under Sections 341 /323 /324 /504 /34 of the Indian Penal Code and supplementary charge-sheet was filed against the two other petitioners Sanjay Yadav and Shanti Devi also. The court below, thereafter, took cognizance of the offence against all the three petitioners under Sections 341 /323 /324 /307 /504 /34 of the Indian Penal Code. It is also stated that after submission of supplementary charge-sheet only in bailable Sections against the petitioners, the petitioners were granted bail from police station itself. However, after taking cognizance of the offence under Section 307 of the Indian Penal Code besides other Sections, the court directed to issue summons against the petitioners. Immediately after the above direction, the case was transferred to another court, whereafter again fresh summons were directed to be issued. As the execution report of the summon was not filed in the court, the case was adjourned on several dates awaiting summons report. Later on, by order dated 16.9.2013 the case was transferred to the Court of Sub-Divisional Judicial Magistrate. The said court without waiting for the execution report of the summon directed to issue bailable warrant. Again by order dated 31.3.2014 the case was transferred to the Court of Judicial Magistrate and this court also without waiting for the execution report of the bailable warrant, directed to issue non-bailable warrant against the accused by order dated 12.6.2014. Though from the order-sheet it appears that even no requisition was filed by the Investigating Officer for issuance of non-bailable warrant and this time also without waiting for the execution report of non-bailable warrant, the court vide order dated 18.8.2014 issued proclamation under Section 82 of the Code which was issued on 11.2.2015. It further appears that without waiting for the report of the proclamation under Section 82 of the Code, the court even without a requisition from the Investigating Officer, vide order dated 17.4.2015 directed to issue process under Section 83 of the Code.

3. Learned counsel appearing for the petitioners submitted that issuance of summons followed by issuance of bailable warrant and non-bailable warrant in a routine manner without waiting for the execution report or a requisition by the Investigating Officer clearly stipulates the non-application of judicial mind of the court below as it was passed without following the ingredients of Section 73 of the Code as well as the mandates given by the Hon'ble Supreme Court in the case of Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, . Learned counsel further seriously contended that without recording any satisfaction or following the mandates of Section 82 and 83 of the Code declaring the accused as absconder and without waiting for the execution report of non-bailable warrant, issued proclamation under Sections 82 and the process under Section 83 of the Code clearly violating the mandates of Sections 82 and 83 of the Code and also the settled principles. Since, all the above orders were issued without application of judicial mind in a mechanical manner and being non-speaking are liable to be quashed.

4. Contrary to the aforesaid submissions, Mr. Mishra, S.C.-III relying upon a Constitution Bench judgment of the Hon''ble Supreme Court submitted that in the said judgment it has been clearly laid down that it is well within the jurisdiction and discretion of the Judicial Magistrate to issue non-bailable warrant against the accused persons if the Sections in which the court has taken cognizance, are non-bailable in nature. It was also submitted that the Hon''ble Supreme Court in the said judgment has further held that discretion has to be exercised judiciously. It was also submitted that the case was lodged in the year 2009 but even after issuance of summons, after the accused persons i.e. petitioners preferred not to appear in the case and tried to conceal themselves or evaded their arrest, the non-bailable warrant and subsequently processes were issued. So it cannot be said that the steps were taken without applying judicial mind.

5. I have gone through the entire order-sheet of the court below and I find that the court below without applying his judicial mind in a mechanical manner passed the orders for appearance of the petitioners. It is also apparent from the order-sheet maintained by the court below that no requisition was ever filed by the Investigating Officer for either issuance of bailable warrant or non-bailable warrant or the process under Sections 82 and 83 of the Code.

6. Having heard the counsels and after going through the records, I find that the learned court below without applying his judicial mind and following the mandates and guidelines given by Hon''ble Supreme Court passed the above orders. It seems that even no application was filed by the Investigating Officer. In a case of Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, , the Hon''ble Supreme Court while dealing with the same situation observed in paragraphs 50 to 55 as follows:---

"50. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

51. Just as liberty is precious for an individual so is the interest of "the society in maintaining law and order. Both are extremely important for the survival of a civilized society. Sometimes in the large interest of the Public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.

When non-bailable warrants should be issued.

52. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when;

? It is reasonable to believe that the person will not voluntarily appear in court; or

? The police authorities are unable to find the person to serve him with a

summon; or

? It is considered that the person could harm someone if not placed into custody immediately.

53. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.

54. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuance non-bailable warrants.

55. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straightjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided."

7. From bare reading of the mandates given in the aforesaid case, it is clear that since the issuance and execution of a non-bailable warrant directly involves the curtailment of liberty of a person, it cannot be issued mechanically, but only after recording satisfaction that in the facts and circumstances of the case, it is warranted and such power has to be exercised judiciously considering the nature and seriousness of the offence involved. The subsequent orders of issuance of warrant of process under Sections 82 and 83 of the Code have also been passed mechanically without following the ingredients of those two Sections. The petitioners were never declared as absconder as required before issuing any proclamation. The orders do not reflect independent application of judicial mind by the learned Magistrate. Since the order of issuing non-bailable warrant of arrest is without application of judicial mind, the subsequent orders in continuation are also liable to be held not in accordance with law. Regard being had to the facts and circumstance discussed above, I find merit in this writ application. It is, accordingly allowed. The orders dated 3.10.2013, 12.5.2014 and 18.8.2014 by which non-bailable warrant, proclamation and the order of attachment of property of person absconding, respectively were issued by the

court below are, hereby, quashed. The court below is, thus, directed to proceed in accordance with law.