

**(2008) 06 GAU CK 0043****Gauhati High Court****Case No:** None

Sultan Ali and Others

APPELLANT

Vs

State of Assam

RESPONDENT

**Date of Decision:** June 23, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 482, 87
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 307, 323

**Citation:** (2009) 6 GLR 759 : (2008) 3 GLT 17**Hon'ble Judges:** Iqbal Ahmed Ansari, J**Bench:** Single Bench**Judgement**

I.A. Ansari, J.

By making this application u/s 482 CrPC, the petitioners, who are accused in G.R. Case No. 353/07, under Sections 147/148/149/323/326/307 IPC, have sought for setting aside and quashing, inter alia, the order, dated 18.04.2008, passed by the learned Judicial Magistrate, 1st Class, Bilashipara, whereby warrants of arrest were directed to be issued against the accused petitioners.

2. Heard Mr. M. U. Mondal, learned Counsel, appearing on behalf of the petitioners, and Mr. B.S. Sinha, learned Additional Public Prosecutor, Assam.

3. The ground of challenge to the impugned order is that no summons was served upon the accused-petitioners before the warrants of arrest were directed to be issued. What is also submitted, on behalf of the accused-petitioners, is that the learned Court below has assigned no reason for directing issuance of warrants of arrest against the present petitioners as accused.

4. While considering the present Criminal Revision, what needs to be borne in mind is that Section 87 CrPC empowers a Magistrate to issue warrant in lieu of, or in addition to, summons under specified circumstances. For the purpose of clear

understanding of the law, which, is relevant in this case, apposite it is that one takes note of Section 87 CrPC, which reads as under:

87. Issue of warrant in lieu of, or in addition to, Summons--A Court may, in any case in which it is empowered by this Code to issue a summon for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest--

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

5. A careful and cautious reading of Section 87 CrPC makes it abundantly clear that a Court is not bound to issue, at the first stage, summon for appearance of accused in each and every case. When a Court is required to issue summon for the appearance of any person as an accused, it may issue warrant for his arrest before the issue of summon or even after the issue of summon, but before the time, fixed for his appearance, has expired, provided that the Court sees reason(s) to believe that the accused has absconded or will not obey the summon meaning thereby that if an accused, according to the Court, has absconded or will not obey the summon, it is within the powers of the Court to issue warrant of arrest instead of summon, at the very first instance, and even when a Court has issued summon, the Court still has the power to issue warrant if it comes to know that the accused has absconded or will not obey the summon. In any of such cases, the Court must, however, record reason(s), in writing, for issuing warrant. In other words, without recording reasons, in writing, the Court shall not issue warrant either before issuing summon or after issuance of summon, but before the date, fixed for appearance of the accused expires. Section 87 also makes it clear that a Court may issue warrant, when summon is proved to have been duly served on the accused, but he fails to appear, though the accused had sufficient time, upon service of summon, to appear in the case and, further, no reasonable excuse is offered for his failure to appear.

6. Thus, Section 87 makes it possible for a Court to issue warrant, instead of summon, if it is satisfied that the accused has absconded or will not obey the summon. The Court may also issue warrant if, pursuant to the summons issued and served upon the accused, the accused, without any reasonable excuse, fails to appear provided that the Court is satisfied that the accused received sufficient time to appear in obedience to the summon served on him.

7. It is, therefore, not correct to suggest, as contended, on behalf of the accused-petitioners, that summon, must be served on an accused before the Court directs issuance of warrant of arrest against him. It is time to make it clear that when a Court, on receiving Charge-sheet, u/s 173(2)(i) CrPC, finds that the accused

has absconded, the Court has no obligation to issue summon to such an accused. However, before issuance of warrant of arrest; it must, in every case, assign reasons irrespective of the fact as to whether the warrant has been issued at the first instance or before the date of appearance of the accused, on the basis of the summon issued to him, has expired or in consequence of the failure of the accused to appear, without any lawful excuse, in the Court in terms of the directions given in the summon served upon him.

8. In the case at hand, as correctly pointed out, on behalf of the accused petitioners, no specific ground has been assigned by the learned Court below for choosing to direct issuance of warrants of arrest against the present petitioners, as accused, in the case aforementioned.

9. Considering the matter in its entirety and in the interest of justice, it is hereby directed that the accused-petitioners shall, within a week from today, appear in the learned Court below in connection with the case aforementioned and if, on their appearance in the learned Court below, the accused-petitioners apply for bail, the learned Court below shall consider and dispose of the same in accordance with law. For a period of one week from today or till the date of appearance of the accused-petitioners in the learned Court below, whichever is earlier, the warrants of arrest shall, if already issued against the accused-petitioners, be kept in abeyance and the same shall be recalled if the accused-petitioners appear in the learned Court below as directed hereinbefore.

10. Before parting with this Criminal Revision, it is however, made clear that if the learned Court below is satisfied, for reasons to be assigned, that the accused-petitioners or any of them had absconded, the learned Court below may pass such order(s) as may be permissible in law. If. With the above observations and directions, this Criminal Revision shall stand disposed of.