(2013) 04 JH CK 0005

Jharkhand High Court

Case No: Cr. M.P. No. 150 of 2013

Shyam Kishore Choudhary @ S.K. Choudhary		APPELLANT
	Vs	
The State of Jharkhand and Another		RESPONDENT

Date of Decision: April 15, 2013

Citation: (2013) 04 JH CK 0005

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Judgement

Rakesh Ranjan Prasad, J.

Since this case arises out of complaint, the complainant has been impleaded as opposite party no. 2 but issuing notice to the opposite party no. 2 would cause delay in disposal of the case and since the nature of the order, which is being passed, is as such, which would never cause any prejudice to the opposite party no. 2, this matter is being disposed of in absence of opposite party no. 2. The instant application is directed against the order dated 2.1.2013 passed in I.D. Case No. 01 of 1881, whereby and whereunder, an application filed u/s 317 Cr.P.C. on behalf of the petitioner was rejected and then the warrant of arrest was ordered to be issued against him.

2. Mr. A.K. Mehta, learned counsel appearing for the petitioner, submits that on 2.1.2013, an application u/s 317 Cr.P.C. was filed but that was rejected on the ground that the case is fixed for pronouncement of the judgment but the petitioner was quite ignorant of the fact that the judgment was to be pronounced on 2.1.2013 and, therefore, the counsel appearing for the petitioner made oral submission to post this case for other day so that the petitioner may appear on that date, but the court below did not consider this aspect of the matter and, therefore, the petitioner has moved to this Court, as the order passed on 2.1.2013 is not in accordance with law.

3. In this respect, learned counsel submits that on 2.1.2013 an application u/s 317 Cr.P.C. was filed, as the petitioner was not in a position to appear physically and, therefore, the court instead of rejecting that application should in view of the decision rendered in a case of Tarapado Ghosh Vs. State of Jharkhand {2009 (2) East Cr. C. 567 (Jhr)} have fixed another date for physical appearance of the petitioner but the court did not resort to that, rather passed an order for issuance of warrant of arrest against the petitioner after rejecting application u/s 317 Cr.P.C.

4. For better appreciation of the submission advanced on behalf of the petitioner, Section 317(2) Cr.P.C. reads as follows:-

317(2). If the accused in any such case is not represented by a Pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourns such inquiry or trial, order that the case of such accused be taken up or tried separately.

5. On reading the said provision, one would find that if the accused is not present on the date fixed, whose presence, according to the court, is necessary, it may adjourn the case for his personal appearance. But here in the instant case the court without adjourning the case for his personal appearance cancelled the bail bond and passed an order for issuance of warrant of arrest.

6. Thus, the impugned order never appears to have been passed in consonance of the provision as contained in Section 317 Cr.P.C. and, hence, the order order dated 2.1.2013 passed in I.D. Case No. 01 of 1881, is hereby quashed.

7. The petitioner is directed to put his appearance before the court below on the date fixed. If on account of any reason, the petitioner is not able to appear on the date fixed, he may appear on the next date fixed by the court.

8. With the aforesaid direction, this application stands disposed of. Let this order be communicated through FAX at the cost of the petitioner.