

(2013) 08 JH CK 0025

Jharkhand High Court

Case No: Criminal M.P. No. 1924 of 2013

Rajesh Prasad Singh

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: Aug. 8, 2013

Citation: (2014) 1 AJR 275

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: Anil Kumar Sinha, Anil Kumar and Krishna Murari, for the Appellant; Shailesh, APP for the Vigilance, for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Ranjan Prasad, J.

All these four applications arising out of the same impugned order, were heard together and are being disposed of by this common order. Heard learned counsel appearing for the petitioners and the learned counsel appearing for the Vigilance.

2. The order dated 09/07/2013, passed in Vigilance P.S. Case No. 11/2009 (Special Case No. 15 of 2009) by the learned Special Judge, Vigilance, Ranchi, whereby and whereunder, warrant of arrest was ordered to be issued against these petitioners is being sought to be quashed on the ground that the same has been passed in complete disregard to the order passed by this Court on 21/03/2013, by which, the order under which warrant of arrest had been issued earlier, was quashed.

3. Mr. Anil Kumar Sinha, learned senior counsel appearing for the petitioners submits that earlier on a requisition submitted by the Investigating Officer, when an order was passed for issuance of warrant of arrest, it was challenged before this Court. This Court, having found the said order being not in consonance with the provisions as contained in Section 73 Code of Criminal Procedure, quashed that order. In spite of that the Investigating Officer submitted a fresh requisition before the Court below praying therein to issue warrant of arrest against the petitioners

and others on the plea that they are evading arrest and in order to substantiate its plea references of the paragraphs of the case diary have been given, wherein the dates have been shown on which raids were laid for arresting the accused, but all those dates on which the Investigating Officer has claimed to have laid raids to apprehend the petitioners are prior to 21/03/2013, which never gives a fresh cause of action to the Investigating Officer to make prayer for issuance of warrant of arrest against the petitioners. In spite of that the Court has passed the order for issuance of warrant of arrest, which is quite illegal.

4. It was further submitted that after the warrant of arrest, issued earlier, was quashed certain developments took place, which are sufficient enough to indicate that the petitioners have never been evading arrest. In this regard, it was pointed out that soon after the warrant of arrest, issued earlier, was quashed vide order dated 21/03/2013, the petitioners serving in the Directorate of Agriculture, joined the posts on 26/03/2013 and since then they have been discharging their duties. Not only that after giving joining, the petitioners did inform to the concerned Secretaries about their willingness to cooperate in investigation, copy of which was also made available to the Vigilance Department. Thereupon, under the order of the S.P., Vigilance, departmental proceedings have been initiated against the petitioners in which proceedings the petitioners are regularly appearing and in such situation, question of petitioners being evading arrest never does arise.

5. Mr. Sinha, learned senior counsel by referring to a decision rendered in a case of [Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and Another](#), submits that since the execution of non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest may not be issued mechanically as sometimes execution of the warrant of arrest may cause wrongful detention which would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India.

6. Learned counsel in this regard did further refer to a decision rendered in a case of [Joginder Kumar Vs. State of U.P. and others](#), to put emphasis that there are chances of violation of human rights because of indiscriminate arrest and, therefore, their Lordships did express their views that a mechanism be evolved for proper balancing of individual rights and liberties with society's rights and individual's obligation and responsibilities towards the society needed. Keeping in view the said proposition laid down by the Hon'ble Supreme Court, the legislature came forward with an amendment in the Code of Criminal Procedure, whereby Section 41A was incorporated stipulating therein about the circumstances under which arrest is to be affected or not to be affected. Mandate of the provision is that so long the accused would be cooperating with the investigation or would respond to the notice issued by the police the accused never warrants to be arrested and, therefore, when in the instant case, S.P. Vigilance had already been informed about the petitioners' willingness to cooperate in the investigation, the police should not have come

forward with a requisition to get a warrant of arrest issued against them. Under the circumstances, the order under which warrant of arrest has been ordered to be issued certainly suffers from illegality.

7. As against this, Mr. Shailesh, learned counsel appearing for the Vigilance submits that earlier when the order was passed for issuance of warrant of arrest against the petitioner, that order, when was challenged, was set aside by this Court on the ground that the order was never in consonance with the provision as contained in Section 73 of the Code of Criminal Procedure. Subsequent to that the Investigating Officer came forward with a fresh requisition, stating therein that these petitioners and other accused persons are evading arrest and on that ground, prayer was made for issuance of warrant of arrest.

8. Upon it, the Court having been satisfied with the claim put in by the police that all the petitioners evading arrest, passed an order and, thereby, the Court never did commit any illegality in passing the order, which is under challenge,

9. Further, it was submitted that so far as submissions advanced on behalf of the petitioners over the applicability of the provisions of Section 41A of the Code of Criminal Procedure is concerned, that is not applicable in the instant case as the provision as contained in Section 41A is applicable for the offence, which is punishable for seven years or less then that, whereas in the instant case some of the offences alleged are punishable for more than seven years.

10. Admittedly, some of the offences alleged to have been committed by the petitioners are punishable for more than seven years. In such situation, any submission made over the applicability of the provisions as contained in Section 41A of the Code of Criminal Procedure needs not be addressed. Therefore, any submission based on the said provision needs not be gone into. But, I must say that since the provision is new one and it does have a great impact upon the right of the citizen of personal liberty it needs to be highlighted, which would be done in an appropriate case if occasion would arise.

11. Corning back to the fact of the case, it be stated that earlier when the order under which warrant of arrest was issued was challenged, it was set aside vide order dated 21/03/2013 for the reason that the ground upon which the warrant of arrest was ordered to be issued was never in consonance with the provisions as contained in Section 73 of the Code of Criminal Procedure. The Investigating Officer, at earlier point of time had never approached to the Court for issuance of the warrant of arrest on the ground that the petitioners are evading arrest, rather the grounds, which had been taken were, never germane to the provisions as contained in Section 73 of the Code of Criminal Procedure.

12. After the aforesaid order was passed, the Investigating Officer again came up with a fresh requisition stating therein that the petitioners and the other accused persons have been evading arrest and even the dates, when the raids were laid,

have been recorded in the requisition. However, a submission has been advanced on behalf of the petitioners that after the order, under which warrant of arrest had been ordered to be issued, was set aside by this Court the petitioners did join the office on 26/03/2013 and since then they are discharging their duties and even the information of it was given to the Vigilance Department and thereby, the petitioners can never be said to have been evading arrest.

13. One would surprise to note that all the four petitioners did give their joining in the Department on 26/03/2013, before that they had proceeded on leave, it may not be co-incidence that all the four petitioners fell in necessity of having leave and proceeded on leave simultaneously which circumstance is suggestive of the fact with the Investigating Officer came with requisition. Moreover, there has been no reason to raise any doubt over the statements made in the requisition that the petitioners are evading arrest. In that situation, if the Court having been satisfied that the petitioners are evading arrest, has passed the order, it seems to be in accordance with the provisions as contained in Section 73 of the Code of Criminal Procedure, which reads as follows:-

73. Warrant may be directed to any person.-(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence, and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken u/s 71.

14. From bare perusal of the section it is manifest that it confers a power upon the Magistrate to issue warrant of arrest of three classes of persons, namely, (i) escaped convict (ii) a proclaimed offender and (iii) a person who is accused of a non-bailable offence and is evading arrest.

15. The scope and parameter of the said provision was examined by the Hon"ble Supreme Court in a case of [State through C.B.I. Vs. Dawood Ibrahim Kaskar and others](#), Their Lordships, while examining it, took into consideration the recommendation of the Law commission in its 41st report and observed in paragraph 20 of the said judgment as under:-

That Section 73 confers a power upon a Magistrate to issue a warrant and that it can be exercised by him during investigation also, can be best understood with reference to Section 155 of the Code. As already noticed under this section a police

officer can investigate into a non-cognizable case with the order of a Magistrate and may exercise the same powers in respect of the investigation which he may exercise in a cognizable case, except that he cannot arrest without warrant. If with the order of a Magistrate the police starts investigation into a non-cognizable and non-bailable offence, [like Section 466 or 467 (part-I) of the Indian penal Code] and if during investigation the Investigating Officer intends to arrest the person accused of the offence he has to seek for and obtain a warrant of arrest from the Magistrate. If the accused evade the arrest, the only course left open to the Investigating Officer to ensure his powers u/s 73 and thereafter those relating to proclamation and attachment. In such an eventuality, the Magistrate can legitimately exercise his powers u/s 73 for the person to be apprehended is "accused of a non-bailable offence and is evading arrest."

16. Consequently, it was held that. Section 73 of the Code is of general application and that in course of investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of non-bailable offence and is evading arrest.

17. While holding so, it was also observed that warrant of arrest cannot be issued only for helping and assisting the prosecution/police in investigation.

18. Regard being had to the facts and circumstances of the case, I do find that the order under which warrant of arrest has been issued is based on a fresh requisition, disclosing therein, that these petitioners and other accused persons are evading arrest. In such situation, the court seems to be absolutely justified in issuing warrant of arrest against the petitioners.

19. It would be worthwhile to record that whatever dates are there in the requisition relating to laying of raid to effect arrest, those dates are prior to 21.3.2013 when this Court had quashed the order, under which warrant of arrest, had been issued, but at that time the prosecution had never come with the case that the petitioners have been evading arrest. Therefore, it will have hardly any effect upon the order Impugned. Thus, I do not find any Illegality with the order dated 09.07.2013 passed in Vigilance P.S. Case No. 11 of 2009 (Special Case No. 15 of 2009] under which warrant of arrest has been issued against the petitioners.

Accordingly, all these applications stand dismissed.