

**(2013) 03 JH CK 0026**

**Jharkhand High Court**

**Case No:** Criminal M.P. No. 523 of 2013

Niranjan Roy

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision:** March 21, 2013

**Acts Referred:**

- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 155, 41, 71, 73, 73(1)
- Penal Code, 1860 (IPC) - Section 120B, 409, 420, 466, 467
- Prevention of Corruption Act, 1988 - Section 13(1)(c)(d), 13(2)

**Citation:** (2013) 4 LJLR 90

**Hon'ble Judges:** R.R. Prasad, J

**Bench:** Single Bench

**Advocate:** Pandey Neeraj Rai, for the Appellant; Shailesh, for the Respondent

**Final Decision:** Allowed

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**Judgement**

R.R. Prasad, J.

Heard learned counsel appearing for the petitioner and learned counsel appearing for the Vigilance. This application has been filed for quashing of the first information report of Vigilance P.S. Case No. 2 of 2011 (Special Case No. 2 of 2011) registered under Sections 409/420 /467 /468 /471 /477A /120-B of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(c)(d) of the Prevention of Corruption Act as well as order dated 07.02.2013 whereby and whereunder warrant of arrested has been ordered to be issued against the petitioner.

2. Learned counsel appearing for the petitioner submits that presently he will not be pressing the prayer whereby first information report has been sought to be quashed rather he would be pressing the matter for quashing of the order under which warrant of arrest has been issued and also the order whereby process has also been ordered to be issued u/s 82 Cr.P.C.

3. Learned counsel appearing for the petitioner submits that the petitioner is an accused in a Vigilance Case No. 2/2011, which has been lodged on the allegation that the accused persons including this petitioner in connivance with each other, put Jharkhand State Electricity Board to heavy loss by making payment of the huge amount to the Contractor M/s. Ramjee Power Construction Limited. The Vigilance, having registered the case, took the matter for investigation and has been doing investigation right from the year 2011. During which period, the petitioner, being Director Finance, JSEB was discharging his duties. Suddenly, a requisition was filed by the Investigating Officer on 07.02.2013 before the court concerned, wherein it has been stated that an FIR has been lodged against the accused persons including this petitioner wherein allegation has been made that the accused persons in connivance with each other, put Jharkhand State Electricity Board to a heavy loss, by making payment to the Contractor M/s. Ramjee Power Construction Limited, when award was given in his favour by the Arbitrator, who should not have been appointed and the petitioner was instrumental in getting an Arbitrator appointed. On such accusation, prayer was made to issue warrant of arrest against the accused persons. On such requisition, an order was passed on 07/02/2013, whereby warrants of arrest were ordered to be issued against the petitioners.

4. Mr. Pandey Neeraj Rai, learned counsel appearing for the petitioner submits that the order under which warrant of arrest has been issued by the court below never seems to be in consonance with the provision u/s 73 Cr.P.C.. as the warrant of arrest has been ordered to be issued only taking into account the complicity found against the petitioner, which never fulfills the condition as has been enshrined in Section 73 Cr.P.C. and, thereby, the court certainly committed illegality in passing the impugned order.

5. In this regard, it was submitted that since execution of warrant does curtail the liberty of a person, it must not be issued mechanically. Only in the event of fulfillment of condition stipulated u/s 73 Cr.P.C., the court would be justified in issuing warrant of arrest against the accused persons. In other words, the Court should not have issued the warrant of arrest on such kind of requisition mechanically, rather the court should have adhered to the provision as contained in Section 73 Cr.P.C. while issuing warrant of arrest against a person. Since the impugned order has been passed without fulfillment of the conditions, as prescribed u/s 73 Cr.P.C., the impugned order suffers from illegality and is fit to be set aside.

6. As against this, Mr. Shailesh, learned counsel appearing for Vigilance submits that ample evidences have already been collected against the petitioner and, thereby, if the court has issued warrant of arrest on the basis of the requisition submitted by the I.O., no illegality has been committed and that since this is the case where Jharkhand State Electricity Board has been put to a great loss by the accused persons including this petitioner, who in conspiracy with each other, was

instrumental in making payment to the Contractor Ramjee Power Construction Limited in crores, impugned order never warrants to be quashed and that the police does have a power to arrest a person, if he is an accused in a cognizable case.

7. There is no dispute in the proposition of law that the police or the investigating agency does have power to arrest a person even in absence of warrant of arrest in a cognizable offence but that power is subject to the conditions stipulated under Sections 41 Cr.P.C. So far as the matter relating to issuance of warrant of arrest is concerned, that never seems to have been issued in accordance with law.

8. In this context, I may refer to the provision of 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.

9. From bare perusal of the section, it is manifest that it confers a power upon the Magistrate to issue warrant for 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.

10. Their Lordships in a case of State through [State through C.B.I. Vs. Dawood Ibrahim Kaskar and others](#), having taken into consideration the aforesaid provision as enshrined u/s 73 of the Code of Criminal Procedure and also recommendation of the Law commission in its 41st report did observe 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-1) 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".

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.

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

Thus, the question which is to be considered as to whether the learned Judge has issued warrant of arrest against the petitioner in consonance with the provision of Section 73 (1) of the Code of Criminal Procedure or not?

11. There appears to be a purpose on the part of the legislature to have a legislation to that effect as in order to maintain rule of law and to keep the society functional in harmony, it is necessary for the court to strike a balance between an individual's rights, liberties and privileges on the one hand, and the State on the other hand.

12. In this context, I may refer to a decision rendered in a case of "Raghuvansh Dewanchand Bhasin -versus- [Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and Another](#), wherein Their Lordships observed as follows:-

10. It needs little emphasis that since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued mechanically but only after recording satisfaction that in the facts and circumstances of the case it is warranted. The courts have to be extra-cautious and careful while directing issue of non-bailable warrant else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India. At the same time, there is no gainsaying that the welfare of an individual must yield to that of the community. Therefore, in order to maintain the rule of law and to keep the society functional in harmony, it is necessary for the Court to strike a balance between an individual's rights, liberties and privileges on the one hand, and the State on the other hand. Indeed, it is a complex exercise. As Cardozo, J. puts it "on the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice".

11. Be that as it may, it is for the court, which is clothed with the discretion to determine whether the presence of an accused can be secured by a bailable or non-bailable warrant to strike the balance between the need of law enforcement on

the one hand and the protection of the citizen from highhandedness at the hands of the law-enforcement agencies on the other. The power and jurisdiction of the court to issue appropriate warrant against an accused on his failure to attend the court on the date of hearing of the matter cannot be disputed. Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter alia, to the nature and seriousness of the offence involved; the past conduct of the accused; his age and the possibility of his absconding.

13. Coming to the fact of the case, it does appear that a requisition was filed by the I.O. stating therein that the petitioner and other accused persons in connivance with each other, put JSEB to heavy loss for making payment to the Contractor on the basis of an award given by the Arbitrator for whose appointment, the petitioner was instrumental, the court issued a warrant of arrest which never appears to be in consonance with the provisions as contained in Section 73. It has never been reported to the court that the petitioner is evading arrest.

14. Under the circumstances, by reserving the liberty to the petitioner to challenge the first information report, this application is disposed of whereby order dated 07.02.2013 and the order under which process u/s 82 has been issued, are hereby quashed as the same never appears to have been issued in accordance with law.

15. However, it goes without saying that the Investigating Officer would be at liberty to proceed with the matter relating to investigation, in accordance with law. In the result, this application is allowed.