

(2010) 08 JH CK 0037**Jharkhand High Court****Case No:** None

Dulal Chand Ghosh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Aug. 12, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 82, 83
- Essential Commodities Act, 1955 - Section 7

Citation: (2010) 4 JLJR 77**Hon'ble Judges:** D.G.R. Patnaik, J**Bench:** Single Bench**Judgement**

D.G.R. Patnaik, J.

Heard Counsel for the petitioner and Counsel for the State.

2. I have also gone through the order-sheets of the trial court records.
3. The petitioner in this application has prayed for quashing the order dated 02.05.2008 passed by the S.D.J.M., Ranchi in connection with Doranda P. S. Case No. 46/1999 whereby non-bailable warrant of arrest has been issued against the petitioner.
4. The case was registered on the basis of the First Information Report lodged by the Block Supply Officer, Namkum for the alleged offence u/s 7 of the Essential Commodities Act. Upon concluding the investigation, the Investigating Officer submitted charge-sheet recommending trial of the petitioner for the aforesaid offence. The learned court below took cognizance of the offence directing the petitioner to appear and face trial.
5. Challenging the impugned order of cognizance, the petitioner had moved up to the Supreme Court and had filed an SLP Criminal No. 2980 of 2003. By its order dated 12.03.2004, the Supreme Court had quashed the impugned order of

cognizance against the petitioner Dusal Chand Ghosh with the following observations.... Having regard to the fact that we are not expressing any opinion on the merits of the matter relating to the offence, if any committed, and the order under challenge could not be sustained even on the mere question of lack of jurisdiction in the Special Court, as held in State of Tamil Nadu Vs. Paramasiva Pandian, we set aside the order of the court below and leave liberty with the authorities to have recourse to and move the appropriate court, to suitably deal with the matter in accordance with law."

6. The Apex Court's order was promptly communicated to the trial court on 29.03.2004, as evident from the order-sheet of the trial court records of the court of S.D.J.M. A similar order affirming the receipt of the copy of the Apex Court order passed in Criminal Appeal No. 323 of 2004 was again recorded in the trial court record by the S.D.J.M. Repeat order dated 17.07.2004 also refers to the receipt of the copy of the order of the Supreme Court passed in Criminal No. 323 of 2004 taking note of the contents thereof.

Surprisingly enough, despite receipt of the orders of the Supreme Court, which had categorically declared that the impugned order of cognizance as taken by the Special Court for the offence u/s 7 of the Essential Commodities Act has been set aside, the learned Magistrate had continued to keep the case alive against the petitioner and had passed the impugned order issuing warrant of arrest against him and not being satisfied by the issuance of the warrant of arrest, learned court below also issued processes under Sections 82 and 83 of the Cr. P. C. against the petitioner.

7. Ventilating the petitioner's grievance in respect of issuance of non-bailable warrant of arrest followed by the orders of issuance of processes, Counsel for the petitioner would submit that the impugned orders apparently suggest that they have been passed mechanically in a most negligent manner without verifying the records and without considering the fact that the petitioner's fundamental rights of liberty are sought to be illegally infringed.

8. If the arguments of the learned Counsel for the petitioner are to be accepted, it would only suggest that the impugned orders have been passed by the Magistrate for any of the following reasons:

(i) The Magistrate has no regard for the order of the Supreme Court.

(ii) He has no understanding of the order.

(iii) The orders in the trial court records are written perhaps by his Bench Clerk or other office clerk and merely signed by him without going into the contents.

(iv) The Magistrate is not diligent and sincere in his duties and has been functioning in a most negligent and reckless manner.

Even taking the one which is the most lenient out of the above stated reasons, the matter certainly calls for an explanation from the officer concerned. I would only express my anguish over the manner in which the officer has been functioning in the performance of his official duties. Without passing a judicial order seeking the explanation from concerned officer, I would rather prefer to refer the matter to the administrative side of the High Court for appropriate action.

9. The office is directed to identify the concerned officer and to place a copy of this order before the Hon"ble Chief Justice for taking appropriate action on the administrative side.

10. Considering the facts and circumstances of the case, the impugned order by which warrant of arrest has been issued against the petitioner and the subsequent orders by which processes under Sections 82 and 83 of the Code of Criminal Procedure has been issued against the petitioner in the case mentioned above, are hereby quashed.