

(2014) 09 JH CK 0052

Jharkhand High Court

Case No: Cr. M.P. No. 2005 of 2014 with I.A. No. 4272 of 2014

Ajay Sahu

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Sept. 10, 2014

Acts Referred:

- Constitution of India, 1950 - Article 21
- Forest Act, 1927 - Section 33
- Penal Code, 1860 (IPC) - Section 120B, 414

Hon'ble Judges: Harish Chandra Mishra, J

Bench: Single Bench

Advocate: Raj Mangal Singh, Advocate for the Appellant

Judgement

Harish Chandra Mishra, J.

Heard learned counsel for the petitioners and learned counsel for the State.

2. The petitioners have filed this application for quashing the entire criminal proceeding and the F.I.R., in Gomia P.S. Case No. 79 of 2014 corresponding to G.R. No. 692 of 2014, for the offence under Sections 414 and 120-B of the Indian Penal Code, Section 4/1 of the Coal Mines Act and Section 33 of the Indian Forest Act.

3. I.A. No. 4272 of 2014 has been filed by the petitioners challenging the order dated 11.8.2014 passed by Ms. Nirja Aasri, learned Judicial Magistrate, Bermo at Tenughat, whereby the learned Magistrate has allowed the prayer of the Investigating Officer for issuing warrant of arrest against the petitioners. This order has been passed on the application itself, filed by the Investigating Officer.

4. After some arguments, learned counsel for the petitioners has given up his prayer for quashing the FIR and the criminal proceeding in Gomia P.S. Case No. 79 of 2014, in view of the allegations against the petitioner and accordingly, this prayer is rejected, as not pressed.

5. Learned counsel for the petitioners has confined his arguments to the order dated 11.8.2014 passed by the learned Judicial Magistrate, whereby on the application of the Investigating Officer itself, it is only written "Seen. Prayer is allowed."

6. Learned counsel for the petitioners has placed reliance upon the decision of the Hon'ble Supreme Court of India in [Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and Another](#), wherein the law has been laid down as follows:-

"9. 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 rule of law and to keep the society in functional harmony, it is necessary to strike a balance between an individual's rights, liberties and privileges on the one hand, and the state on the other. Indeed, it is a complex exercise. As Justice Cardozo puts it "on the one side is the social need that crime shall be repressed. On the other, social need that law shall not be flouted by the insolence of office. There are dangers in any choice." 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..... "

(Emphasis supplied).

7. Placing reliance on this decision, learned counsel for the petitioners has submitted that in the present case on the application given by the Investigating Officer and on application itself, the Judicial Magistrate, without application of any judicial mind or recording her satisfaction, has only allowed the prayer of the Investigating Officer. As such, the impugned order is absolutely illegal and cannot be sustained in the eyes of law.

8. Learned counsel for the State has opposed the prayer submitting that the I.O. has written in the application that the petitioners were evading the arrest and accordingly, it cannot be said that the impugned order is bad in the eyes of law.

9. After having heard learned counsels for both the sides and upon going through the impugned order, I find that though it is stated in the application filed by the Investigating Officer that the petitioners are evading the arrest, but in my considered view, the Magistrate could not issue the warrant of arrest mechanically and without recording her satisfaction about the case. It is apparent from the

impugned order that only on the application filed by the Investigating Officer, the Judicial Magistrate has only written "Seen. Prayer is allowed.", which clearly shows that there is absolute non-application of judicial mind by the Magistrate, much less the recording of the satisfaction by her. The order is absolutely a non-speaking order. I am of the considered view that the impugned order cannot be sustained in the eyes of law.

10. Accordingly, the impugned order dated 11.8.2014 passed by Ms. Nirja Aasri, the learned Judicial Magistrate, Bermo at Tenughat, in Gomia P.S. Case No. 79/2014 corresponding to G.R. No. 692/2014, is hereby, set aside.

11. It goes without saying that the Investigating Officer of the case shall be free to exercise his powers under the Cr. P.C., in accordance with law, with regard to the cognizable and non-bailable offences.

12. This criminal misc. application is accordingly, disposed of and the I.A. No. 4272 of 2014, is hereby, allowed with the observation, as above.

13. Let this order be communicated to the Court concerned through FAX at the cost of the petitioners.