
(2007) 2 PLJR 838

Patna High Court

Case No: Cr.WJC No. 702 of 2006

Narayan Kumar Bharti
and Others

APPELLANT

Vs

State of Bihar and
Others

RESPONDENT

Date of Decision: Jan. 8, 2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 73#Penal Code, 1860 (IPC) â€” Section 120B, 408, 409

Citation: (2007) 2 PLJR 838

Hon'ble Judges: Navaniti Pd. Singh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Navaniti Pd. Singh, J.

The present application has been filed by the petitioners, inter alia, for two reliefs. First, the quashing of the first

information report and the consequential police investigations into the alleged misappropriation and defalcation of public funds and secondly the

order passed by the Chief Judicial Magistrate on 9.10.2006 purporting to be an order in terms of Section 73 of the Criminal Procedure Code

issuing non-bailable warrant of arrest against the petitioners at the request of the investigating agency. State has filed a counter affidavit and a

rejoinder thereto has been filed. Heard the parties and with their consent, this writ application is being disposed of at the stage of admission itself.

2. So far as the first contention is concerned, in my view, it is too premature for going into the correctness or otherwise of the allegation as made or the defence in that regards. Suffice to say that the allegations are totally dependent on facts which are still to be investigated. Petitioners assert that various works were taken up departmentally and advances were made and works were being carried out. None of the works were complete as yet still an accounting was done and on basis of incomplete work misconceived allegations of misappropriation of funds and defalcation of funds have been leveled, it is submitted that as there was time still available to complete the work and if the same was permitted, work would have been complete. It is only with ulterior motives to disturb the working, the present prosecution has been launched. If petitioners, are given time to complete the work then they would have completed the work within the specified time leaving no grievance whatsoever but taking action midway cannot be justified. On the other hand, State submits that the matter in which work was picked up and the manner in which advances were made and records maintained led the authorities to believe that there was large scale bungling going on. To my mind, it is too premature to decide on either contention. Suffice to know that if time was still available to complete the work, the authorities should have first waited for the time to elapse after warning the concerned parties and then taken action as the interest of the authorities would be to see that the work was properly done according to specifications. Be that as it may, I am not inclined to interfere with the first information report or the investigation at this stage.

3. Coming to the next question of the police seeking the help of the learned Chief Judicial Magistrate in securing the presence of the petitioners by filing an application in terms of Section 73 of the Criminal Procedure code and the Chief Judicial Magistrate issuing non-bailable warrant in this case, I may just note that the first information report having been registered was received before the Chief Judicial Magistrate on 3.10.2006 and on

9.10.2006 an application was filed by the investigation agency for on warrant against the petitioners. The only explanation given is that in the short period of six days, the police was unable to apprehend the accused persons who were absconding and, as such, required warrant from the Court for their arrest.

4. To my mind, such a stand by the State is neither supported in fact nor in law. The first information report having been registered under Sections

408, 409, 120B of Indian Penal Code which are all cognizable offence, the police requires no warrant from court to arrest the accused persons.

Being cognizable offence, police has full authority to arrest the accused persons wherefrom they are. If police could not find them on their own then

this Court fails to understand when once warrants come in their hand, they would be able to find that very person. Warrant of arrest does not

throw light on the place where accused persons reside and/or hide. Non-bailable warrant of arrest would only authorise officers and confer

authority on them to arrest a person and produce them before the Court. In a cognizable offence, the police needs no such authorisation from the

Court much less in terms of Section 73 of Criminal Procedure Code as has been held by the Apex Court in the case of State vs. Daud Imbrahim

since reported in AIR 1997 S. C 2494 wherein in paragraph 23, it has been stated so:

Since warrant is and can be issued for appearance before the Court only and not before the police and since authorisation for detention in police

custody is neither to be given as a matter of course nor on the mere asking of the police, but only after exercise of judicial discretion based on

materials placed before him, it cannot be said that warrant of arrest could be issued by the Courts solely for the production of the accused before

the police in aid of investigation.

5. This position has been discussed in detail by this Court in a judgment since reported in Krishna Murari Yadav Vs. State of Bihar, . In the

present case, the Magistrate has applied no mind. He has acted in a totally mechanical manner. In a manner of speaking, he has passed an order in

most mechanical manner merely for the asking by the police. To my mind, the Magistrate has completely failed to exercise the jurisdiction in a

lawful manner. The police has equally misdirected itself. Both police and Magistrate failed to appreciate that in terms of Section 73 of Criminal

Procedure Code, the warrants can only be issued for production of an accused before the Court. This clearly predicates that warrants are not to

be issued for arrest of accused for taking their statement by the investigating authority or otherwise for any purposes of the investigation. These are

two different aspects of the matter and in this perspective, the Apex Court has held that no warrant can be issued on the prayer of investigating

agency in aid of investigation.

6. I, therefore, have no option but to quash the order dated 9.10.2006 by which non-bailable warrants have been issued against the petitioners as

the order is wholly without jurisdiction and de hors the provisions of Criminal Procedure Code. This writ application is, accordingly, allowed to the

extent as indicated above.