

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.401 of 2015

Arising Out of PS.Case No. -107 Year- 2015 Thana Tajpur(Waini) District- SAMASTIPUR

Sanjay Kumar Singh @ Sanjay Singh Son of Sri Kailashpati Singh Resident of village and P.O. Digambara, P.S. Tajpur (Waini), District - Samastipur

.... Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna
2. The Superintendent of Police, Samastipur, District Samastipur
3. The Station Head officer, Tajpur (Waini) Police Station, District - Samastipur
4. Sri Barun Kumar Sah Son of Late Rajendra Prasad Sah Resident of village and P.O. Waini, P.S. Tajpur (Waini), District - Samastipur

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. S.B.K.Manglam, Advocate
Mr. Chandan, Advocate
Ms. Anita Kumari, Advocate

For the Respondent/s : Mr. Pankaj Kumar Pandey, AC to SC 33

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 24-04-2015

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

2. The present writ petition has been filed with a prayer for quashing the order dated 13.04.2015 passed by the learned Judicial Magistrate Ist Class, Samastipur in Tajpur (Waini) P.S. Case No. 107 of 2015 issuing warrant of arrest as well as process under Sections 82 and 83 Cr.P.C. against the petitioner being one of the accused named in the FIR instituted for the offences under Section 302/34,120B IPC and Section 27 of the Arms Act.

3. It appears that Tajpur (Waini) P.S. Case No. 107 of 2015 was registered against the petitioner and seven other accused persons for an occurrence of the day before namely 07.04.2015, when the brother of the Respondent No. 4 was killed.

4. A day after the institution of the First Information Report the Police proceeded to investigate the case and made arrest of two persons who were remanded to judicial custody. A mere two days later on 11.04.2015 the Station House Officer, Tajpur (Waini) Police Station, filed a requisition before the learned Judicial Magistrate Ist Class, Samastipur for issuance of warrant of arrest along with process under Section 82 and 83 Cr. P.C. against the remaining accused persons. Another two days later on 13.04.2015 a warrant of arrest was issued which appears to have been received at 4:30 p.m. and immediately the same was returned without disclosing any reason. On being represented that the matter was being monitored by the Director General of Police and that the accused persons had absconded and were disposing of their movable properties for which process under Section 82 and 83 Cr.P.C. were sought, the learned Magistrate by his order dated 13.04.2015 granted the same.

5. It is submitted on behalf of the petitioner that the chronology of events demonstrates the undue haste with which action has been taken by the Police as well as by the learned Judicial Magistrate Ist Class, Samastipur. It is further submitted that the Police has clearly been acting under pressure inasmuch as there could no be occasion for the Police to have returned the warrant of arrest to the Court immediately upon its issuance. It clearly shows that no attempt whatsoever was made for executing the warrant of arrest upon the accused. Section 82 Cr.P.C.



contemplates a proclamation against an absconder and a time limit of not less than 30 days thereafter for the accused to appear and it is only in default thereof that the order of attachment under Section 83 Cr.P.C. can be issued. The proclamation under Section 82 Cr.P.C. itself can be made only after the Court comes to a satisfaction that the accused has been evading arrest or has been concealing himself so that the warrant cannot be executed. In the present case, none of the requirements of the provisions of Sections 82 and 83 Cr.P.C., have been observed.

6. Learned counsel for the petitioner further relies on the decisions reported in 2003 (1) PLJR 350 (Nalini Kant Agrawal vs. The State of Bihar and others), 2007 (3) PLJR 748 (Usha Mishra vs. The State of Bihar and others) and 2005 (3) PLJR 746 (Krishna Murari Yadav vs. State of Bihar) and submits that the instant case is squarely covered thereby.

7. Learned counsel for the Respondent State opposes the writ petition and submits that there is nothing on the record to show that the petitioner has even applied for anticipatory bail and is clearly evading arrest.

8. It appears from the impugned order dated 13.04.2015 that the learned Magistrate does not appear to have satisfied himself that the petitioner had been evading arrest and has issued process under Section 82 Cr.P.C. mechanically. Moreover, neither has the petitioner been declared a proclaimed offender nor has the mandatory time limit of 30 days thereafter been observed, being a pre-requisite before which the order of attachment under Section 83 Cr.P.C. can be issued, rather such processes have been issued simultaneously which is on the face of it unsustainable. In this view of the matter, the processes under Section 82

and 83 Cr.P.C. issued in terms of order dated 13.4.2015 are held to be illegal and quashed as such.

9. The writ petition is allowed.

10. It is however, made clear that in a case of cognizable offence, the police has jurisdiction to arrest a person suspected to be involved in a crime even without warrant. It will therefore, be open to the Police to exercise its jurisdiction under Section 41 Cr.P.C. and this order shall not be construed in any manner to deter the police from arresting the petitioner if there be justifiable grounds for his arrest.

(Vikash Jain, J)

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