

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.53650 of 2015

Arising Out of PS.Case No. -103 Year- 2015 Thana -BELAGANJ District- GAYA

Deepak Kumar son of Sumant Prasad

.... Petitioner

Versus

The State of Bihar through Home Secretary, Bihar, Patna & Ors.

.... Opposite Parties

Appearance :

For the Petitioner/s : Mr. Indradeo Prasad, Advocate

For the State : Mr. Nawal Kishore Pd, APP

For the information : Mr. Avinash Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 15-07-2016

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

2. By way of invoking the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure (for short 'CrPC'), the petitioner has sought for quashing of the order dated 08.09.2015 and 26.09.2015, whereby the learned 1st Additional Sessions Judge-cum-Special Judge, (POSCO Act), Gaya has issued non-bailable warrant of arrest and process under Section 82 of the CrPC against the petitioner.

3. The orders under challenged read as under:-

“ 8.9.15 *The I.O. has filed a petition praying therein to issue W/A against the accused Dipak Kumar.*

Petition is allowed.

O/C to issue NBW against the aforesaid accused.

26.9.15 *The I.O. has filed a petition praying therein to issue process u/s 82 Cr.P.C. and return back NBW unexecuted.*

The prayer is allowed.

O/C to issue process u/S 82 Cr.P.C. against the accused Dipak Kumar.”

4. A short argument has been made by the learned counsel for the petitioner that from a bare perusal of the orders impugned it would reflect that the learned Special Judge, has passed the orders mechanically without application of judicial mind. He has submitted that under Section 73 of the CrPC, the Court has discretion to issue 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 his arrest. The petitioner is neither escaped convict nor proclaimed offender. In case, the court was of the view that the petitioner is evading arrest in a non-bailable offence, it ought to have recorded those findings in the orders. However, the orders do not reflect that the court below was satisfied that the petitioner

being an accused in a non-bailable offence was evading arrest.

5. On the other hand, learned counsel for the informant as also learned counsel for the State have submitted that there is no dispute to the fact that the petitioner has been made accused in a case registered under Sections 366-A and 376 of the Indian Penal Code as well as Sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012. The case has been registered on 14th June 2015. The petitioner is a named accused and till date he has not appeared before the court. Under such circumstances, no illegality can be found with the orders impugned, if the court has not recorded its finding that the petitioner is evading arrest.

6. I have heard respective counsel for the parties and carefully perused the record.

7. It is true that the petitioner has been made accused in a serious offence. It is equally true that the court has jurisdiction to issue warrant of arrest and the process under Section 82 of the Code of Criminal Procedure. However, these facts cannot cure the apparent illegality in the orders impugned. It has rightly been submitted by the learned counsel for the petitioner that mere perusal of the orders would reflect that there is total lack of application of judicial mind. It appears that warrant of arrest has

been issued on mere asking of the police. Before issuing warrant of arrest, the Court ought to have satisfied itself that the petitioner falls under any of the three categories mentioned under Section 73 of the CrPC, i.e., (i) escaped convict, (ii) proclaimed offender, or (iii) an accused of a non-bailable offence who is evading arrest. There is no such finding in the order impugned.

8. In view of the aforesaid illegality, the impugned orders dated 08.09.2015 and 26.09.2015 are, hereby, quashed.

9. It is made clear that the Court would not be precluded from issuing warrant of arrest or processes under Sections 82 and 83 of the CrPC against the petitioner. However, if required, such orders should be passed on merits only in accordance with law and not on mere asking by the police.

10. With the aforesaid observation, this application is allowed.

(Ashwani Kumar Singh, J.)

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