

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2021 of 2018

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Raju Jha @ Raju Kumar Jha S/o Late Banbali Jha, R/o Vill.-
Sahua Tole Kaithiniyan, P.S.- R.S. Shivir , District-
Madhubani.

.... Petitioner

Versus

1. The State of Bihar, Through The Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Home Government of Bihar Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Binodanand Mishra, Advocate
For the Respondent/s : Mr. Parth Sarthi(GA-4)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2. 25-10-2018

Heard learned counsel for the petitioner and

learned counsel representing the State.

The petitioner, in the present case, is seeking
the following reliefs:

“I. For setting aside the order of issuance of
bailable warrant dated 7.12.2009, issuance of
non bailable warrant dated 14.7.2010,
issuance of processes under Section 82
Cr.P.C. dated 1.2.2011, issuance of process
under Section 83 Cr.P.C. dated 11.5.2011 and
the order dated 7.2.2012 declaring the
petitioner absconder by the Judicial
Magistrate, 1st, Jhanjharpur (Madhubani) in
Madhepur P.S. Case No. 0271/07.

II. And for any other relief(s) to which the
petitioner may be found entitled.”

Learned counsel for the petitioner submits that
the petitioner was on bail however after filing of the



charge-sheet when the learned court below issued summons the same was not served upon the petitioner. It is stated that in a routine and mechanical manner the subsequent orders were passed by which warrant of arrest and even attachment orders and proclamations were issued against the petitioner.

Learned counsel submits that the subsequent orders by which warrants in addition to summons were issued were wholly illegal and the same is in the teeth of the statutory provision as contained in Section 87 of the Code of Criminal Procedure.

It is submitted that the non-compliance of the statutory provision has resulted in prejudice to the interest of the petitioner which is required to be considered.

Learned counsel for the State is present, however for the present he has no instruction in the matter. Learned counsel however submits that in case the orders passed by the learned court below are not in consonance with the statutory provision, the same may be looked into by the court below and for that purpose the petitioner is required to move in the concerned court with an appropriate application.

Having heard learned counsel for the parties and on perusal of the records, this court finds that the



petitioner has brought on record the certified copy of the order-sheets of the court below as Annexure-2 to the present application. The submission of learned counsel for the petitioner finds credence on going through the orders of the various dates. It is apparent from the order dated 03.08.2009 that on the said date there was no service report of the summons as the order reads as follows:

03.08.09 पीठासीन पदा० का स्थानान्तरण हो चुका है। अभियुक्त अनुपस्थित। तामिला अप्राप्त। दिनांक 07.12.09 वास्ते उपस्थिति।

On the subsequent date, i.e., on 7.12.2009, the court directed for issuance ofailable warrant, however the order of the court was not complied with for next two dates, when all of a sudden on the third date, i.e., on 22.4.2010, a direction was passed to issue non-ailable warrant of arrest. This court finds that the submissions of the petitioner are required to be looked into by the court below and the same should be examined side by side the records available with the court.

Section 87 of the Code of Criminal Procedure reads as under:

87. Issue of warrant in lieu of, or in addition to, summons – A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest –



- (a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or
- (b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.”

The aforesaid provision has been held to be mandatory and any violation thereof would vitiate the order of the court. At this stage, therefore, finding it a prima facie case for interference, this court would dispose of the present application with a direction to the petitioner to surrender in the court below with an appropriate application giving the facts and circumstances under which he could not appear. The application of the petitioner shall be considered by the court first without taking the petitioner in custody. The application shall be considered with the materials available on the record before the court and in case it is found that there was no service report of summons on the petitioner, the benefit of that will go to the petitioner.

The court below shall pass an appropriate order thereon and shall proceed with the trial in accordance with law and in any case it should be concluded within a period of six months from the date of



appearance/surrender of the petitioner in the court below.

With the aforesaid directions, this application stands disposed off.

(Rajeev Ranjan Prasad, J)

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