

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67751 of 2019

Arising Out of PS. Case No.-423 Year-2019 Thana- GOPALGANJ TOWN District-
Gopalganj

=====

Kamini Singh Wife of Murlidhar Singh Resident of Flat No. 401, Shyama
Shaswatam Ara Gardens Road, P.S.- Rupaspur, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Rana Pratap Singh Son of Late- Ramashankar Singh Resident of Rajendra
Nagar Ward No. 22, P.S.- Gopalganj, District- Gopalganj.

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 68642 of 2019

Arising Out of PS. Case No.-423 Year-2019 Thana- GOPALGANJ TOWN District-
Gopalganj

=====

Murlidhar Singh @ Dr. Murlidhar Singh S/o Late Sri Ramchandra Prasad
Singh Resident of Flat No. 401, Shyama Shaswatam Ara Gardens Road, P.S.-
Rupaspur, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Rana Pratap Singh S/o Late Ramashankar Singh Resident of Rajendra Nagar
Ward No. 22, P.S.- Gopalganj, District- Gopalganj

... .. Opposite Party/s

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Appearance :

(In Criminal Miscellaneous No. 67751 of 2019)

For the Petitioner/s : Mr. P. K. Shahi, Sr. Advocate
Mr. Sumeet Kumar Singh, Advocate
Mr. Satyendra Prasad Singh, Advocate

For the Opposite Party/s : Mr. Sanjay Kumar Singh, APP
(In CRIMINAL MISCELLANEOUS No. 68642 of 2019)

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Advocate
Mr. Sumeet Kumar Singh, Advocate
Mr. Satyendra Prasad Singh, Advocate

For the Opposite Party/s : Mr. Pranav Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 05-11-2019



Heard the learned counsel for the petitioners and the State.

The petitioners in the aforementioned applications are husband and wife respectively who have been made accused in Gopalganj Town P. S. Case No. 423 of 2019 under Sections 302 and 34 of the Indian Penal Code. They seek quashing of the order dated 02.09.2019, by which process under Sections 82 and 83 Cr.P.C. has been issued against them for their proclamation and attachment of property.

The grounds urged on behalf of the petitioners for quashing the aforesaid order is that the Investigating Agency as well as the Court has shown extreme haste in procuring and granting such process within a short span of a week.

The subject F.I.R. has been registered on 29.08.2019 and within a period of two days on 31.08.2019, an application was filed for issuance of warrant of arrest under Section 73 of the Code of Criminal Procedure, which was allowed on the same day and warrant of arrest was issued. Again, within two days, i.e., on 02.09.2019 another application was filed by the Investigating Officer for issuance of process



under Sections 82 and 83 of the Cr.P.C. against the petitioners as they were reportedly making attempts to evade the process of law and removing movable and immovable properties from the jurisdiction of the Investigating Agency.

The aforesaid request of the Investigating Officer was allowed and process for proclamation and attachment of property was issued on the same day (02.09.2019).

Mr. P. K. Shahi and Mr. Chitranjan Sinha, learned senior Advocates appearing for the parties have vehemently urged that the manner in which the Investigating Officer has filed such application seeking warrant of arrest and initiation of process under Sections 82 and 83 Cr.P.C. merely reflects that a vindictive approach has been adopted, not for the purposes of carrying out investigation in the case but for insulting and harassing the petitioners / accused persons.

While advancing the arguments in such direction, it was urged that in the first instance, warrant of arrest was not required to be issued within two days of the lodging of the F.I.R. as Section 73 mandates that the concerned Court could issue a warrant to any person for the arrest of any escaped



convict, proclaimed offender or any person accused of non-bailable offence, who is evading arrest. The petitioners would come in the category of accused persons of non-bailable offences but for them to be dubbed as evaders was not justified, more so, when only two days had passed when the case against them was registered with the police.

It is also required to be noted that one of the accused persons / petitioners is a woman.

Within four days of the registration of the F.I.R., an application was filed by the Investigating Officer intimating the Court concerned that efforts are being made by the petitioners to evade arrest and remove movable and immovable properties. Without there being any specific evidences for the investigator to come to such specific conclusion as aforesaid, such an application was filed and the same was allowed on the same day.

There are two other aspects, which have been brought to the notice of this Court while canvassing the case of the petitioners.



It has been pointed out that both the petitioners, after having come to know about their implication in the subject F.I.R., proceeded to file an application for anticipatory bail before the court below but the same stood rejected primarily on the ground that processes under Sections 82 and 83 Cr.P.C. have been initiated against them by the court below. The petitioners have preferred anticipatory bail applications before the High Court which is pending adjudication.

Sections 61 to 90 of the Code of Criminal Procedure falls under Chapter-VI, which deals with the processes to compel appearance of an accused, is relatable to his appearance in Court and not before the Investigating Officer. While dealing with this issue, the Supreme Court in the case of ***State Versus Daud Imbrahim [1997 A.R.R. S.C. 2494]*** has held in paragraph 23 as follows:

"Section 73 of the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of a non-



bailable offence and, is evading arrest, the related question as to whether such issuance of warrant can be for his production before the police in aid of investigation. It cannot be gainsaid that a Magistrate plays, not infrequently, a role during investigation, in that on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen handwritings etc. However, in performing such or similar functions the Magistrate does not exercise judicial discretion like while dealing with an accused of a non-bailable offence who is produced before him pursuant to a warrant of arrest issued under Section 73. On such production, the Court may either release him on bail under Section 439 or authorize his detention in custody (either police or Judicial) under Section 167 of the Code. Whether the Magistrate, on being moved by the



Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with Section 167(3) of the Code. Since warrant is and can be issued for appearance before the Court only and not before the police and since authorization 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."

Though the position of a Magistrate during the course of investigation is very important, nonetheless the powers to issue warrant and initiation of proceedings under Sections 82 and 83 is not meant for providing an aid to the investigation but only for appearance before the Court. An accused, when arrested has necessarily to be brought to the Magistrate and it



is a part of investigating process that he is given to police remand, when asked for, with special reasons. Under such circumstances, warrant of arrest could be issued, as the end result of investigation is to book an accused after finding the guilt and putting him to trial. Nonetheless, the purpose of Sections 73, 82 and 83 of the Code of Criminal Procedure is not to provide aid in the investigation. The powers of an Investigating Agency has a very wide plenitude and such powers are plenary powers over which there are no fetters except what has been provided for in the Code and that such powers are exercised in consonance with the purpose of investigation of a case. With such plenitude of power, no external or internal aid is required in the shape of a judicial order. Such being the position, the orders of initiation of proceeding under Section 82 and 83 of the Code against the petitioner is to be seen and assessed / evaluated.

It is difficult for this Court to accept that within two days of the registration of the F.I.R., the Investigator had sufficient reasons to believe that without any warrant of arrest, the petitioners would not surrender to the process of law and



within four days of the registration of the F.I.R., the investigator came to the conclusion that efforts are being made to remove the movable and immovable properties from the jurisdiction of the concerned police station.

There are certain provisions in the Police Manual, especially Rule 286 which deals with absconders and the process which has to be undertaken by the police. Nonetheless, for securing an order either under Section 73 or 82 and 83 of the Code, there has to be reasonable material for the Court to be satisfied that such orders are necessary. A Court of law as has been observed in the case referred to above *viz* Daud Imbrahim (supra), the Magistrate cannot be called upon to act in aid of the Investigator to get hold of the accused persons and bring him to book. The short span of time within which the entire process has been undertaken reflects that the purpose is not to investigate the case properly but to anyhow secure the arrest of the accused persons.

Arresting an accused person is an important aspect of investigation and it cannot be said that the police ought to, under some circumstances, give relaxation to the accused



persons to obtain favourable orders in the shape of bail, but pre-empting any opportunity of the accused persons to avail of the remedies available to him by hounding of such persons in such a hurried manner does not appear to be justifiable.

From the perusal of the orders issuing warrant of arrest and initiating the process under Sections 82 and 83 of the Code, on the mere asking of the Investigator and without any satisfaction with respect to the fact for which such prayers were made by the Investigator, the order of the Magistrate becomes suspect in as much as a doubt creeps in that such order has been passed mechanically and without arriving at any satisfaction necessary for issuance of such an order.

The learned counsel for the parties have candidly expressed the fear that even without any proclamation of the Court under sub-clause (v) of Section 82 Cr.P.C., the petitioners would be debarred from obtaining pre-arrest bail. The fear gets further confounded by the fact that the court below has refused to grant anticipatory bail on this ground alone that the process under Sections 82 and 83 has been initiated.



Similar views on issuance of process under Sections 82 and 83 of the Code have been expressed by a Bench of this Court in *Usha Mishra Versus The State of Bihar* [2007 (3) PLJR 748], in which reliance has been placed on the judgement delivered in *Nalini Kant Agrawal Versus State of Bihar* [2003(1) PLJR 350] and *Krishna Murari Yadav Versus State of Bihar* [2005 (3) PLJR 746].

Without adverting to the facts narrated in the F.I.R., the seriousness of the offence and the materials collected during the course of investigation, it appears to this Court that unwarranted haste has been shown by the Investigator and an imprimatur of the Court has been put on such a half-baked request made by the Investigator.

For the aforesaid reasons, this Court deems it necessary, in the interest of and to otherwise secure the ends of justice, to exercise its powers under Section 482 of the Code of Criminal Procedure to quash the order dated 02.09.2019, whereby process under Sections 82 and 83 has been initiated and sets it aside.



It would be open for the Investigator to supply fresh materials to the Court and ask for such process to be issued. The Magistrate concerned would be under an obligation to look at the materials and pass necessary orders in accordance with law but only on being satisfied that the circumstances indicate that without the issuance of the process under Sections 82 and 83, the accused persons / petitioners would run away from the hands of law and would also remove their movable and immovable properties.

The reason why this Court has chosen to quash the order dated 02.09.2019 is that it does not reflect any such application of mind over the request made by the Investigator and the order *prima facie* appears to be a mechanical order.

The Magistrate shall be under an obligation to pass a fresh order in case such application is made.

It is also made clear that the powers to investigate includes the power to investigate in an unfettered manner.

The quashing of the order initiating the process under Sections 82 and 83 ought not to be meant as any impediment



in the investigation of the case and arrest of the accused persons.

With the aforesaid observation / direction, both these petitions stand allowed.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	14.11.2019
Transmission Date	

