

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**WA No. 282 of 2020**

(Arising out of order dated 17/02/2020 passed by learned Single Judge in WPCr. No. 1196 of 2019)

- Jamuna Prasad Jaiswal S/o Late Shri Radhe Shyam Jaiswal, aged about 65 years, R/o Marwahi, Police Station: Marwahi, District Bilaspur C.G. Now District Gourela Pendra Marwahi C.G.

-----Appellant**VERSUS**

1. State of Chhattisgarh through: The Chief Secretary of Govt. of Chhattisgarh, Ministry, Mahanadi Bhawan, New Raipur District Raipur C.G.
2. State of Chhattisgarh through Principal Secretary Department of Home (jail) Ministry Mahanadi Bhawan, New Raipur Chhattisgarh
3. The District Magistrate, District Bilaspur C.G.
4. Director General of Police, Raipur C.G.
5. Inspector General of Police Bilaspur District Bilaspur C.G.
6. Superintendent of Police Bilaspur District Bilaspur C.G.
7. The Sub Divisional Officer (Police) Pendra Road, District Bilaspur C.G.
8. The Station House Officer, Station Incharge, Police Station Marwahi, District Bilaspur Chhattisgarh.

-----Respondents

For Appellant	:	Mr. Dharendra Prasad Mishra, Advocate
For Respondent-State	:	Mr. Gagan Tiwari, Deputy Government Adv.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per P.R. Ramachandra Menon, C.J.****18/06/2020**

1. Interference declined by the learned Single Judge to accede to the prayer raised by the appellant/petitioner to direct the 1st Respondent to have a Judicial Enquiry with regard to the arrest of the appellant herein, despite the fact that Bail had already been granted to him, on the strength of an un-executed permanent warrant, is the subject matter of this appeal.
2. Heard Mr. Dharendra Prasad Mishra, learned counsel for the appellant and Mr. Gagan Tiwari, learned Deputy Government Advocate representing the State as well.

3. The sequence of events reveals that the police in connection with a crime registered against the appellant involving offences punishable under Sections 294, 506, 323 and 427 of the IPC, was finding it difficult to book the accused, because he was absconding. Under such circumstance, a permanent warrant of arrest came to be issued on 21-02-2018. This made the appellant/petitioner to move this Court by filing W.P.(Cr.) No. 491/2018, when he was relegated to file an application in terms of Section 70(2) of the CrPC before the Judicial Magistrate concerned for cancellation of the permanent warrant of arrest. It is not a matter of dispute, that the appellant finally was released on Bail on 05-01-2019. The learned Judicial Magistrate, First Class, Marwahi had directed to recall the un-executed permanent warrant of arrest, already issued against the appellant; but since it was not implemented, the appellant came to be arrested on 13-03-2019, though he was released on the same day; on coming across the actual fact.
4. This, according to the petitioner, made him to suffer a huge trauma because of the irresponsible behavior and alleged atrocity done by the police. The appellant approached this Court by filing a writ petition with the prayer as mentioned above, to cause a judicial enquiry into the affairs. The version of the police was sought for and affidavits of the Officers concerned were caused to be filed. After hearing both the sides, a learned Single Judge of this Court considered the specific question as to whether the arrest of writ petitioner, on the strength of the un-executed permanent warrant of arrest, was unauthorised or not. It was also brought on record that, though the learned Magistrate had issued necessary orders to cause the un-executed permanent warrant of arrest to be recalled, it however, did not reach the police, as borne by the affidavit/ proceedings filed from the part of the police. It was also submitted before this Court, that because of some clerical mistake, the order passed by the Judicial Magistrate could not be given effect to from the office of the Judicial Magistrate. It was in the said circumstance, that the police proceeded on the strength of un-executed permanent warrant and the appellant was arrested on 13-03-2019. But on taking further steps, it was revealed that the appellant was already released on Bail on

05-01-2019 and that the un-executed permanent warrant was directed to be recalled by the learned Magistrate, though this unfortunately was not given effect to; which led to the immediate release of the appellant on the same day.

5. The learned counsel for the appellant pressed much for granting relief(s) sought for, which was vehemently opposed by the learned counsel for the State.
6. As mentioned already, the primary point to be considered is whether the arrest pursuant to un-executed permanent warrant, in the above fact and circumstance, could be declared as without authority of law; to find the police guilty? In W.P. (Cr.) 1196/2019, this question was considered by the learned Single Judge of this Court with reference to the law declared by the Apex Court in **Raghuvansh Dewanchand Bhasin v. State of Maharashtra and another** reported in **(2012) 9 SCC 791**. Paragraph 23 of the said judgment was extracted in 'paragraph 9' of the verdict passed by the learned Single Judge, showing that a categorical finding was rendered by the Apex Court, to the effect that since the permanent warrant was lying un-executed, the arrest made on the basis of the said warrant, cannot be said to be *per se* without authority of law.
7. Considering the factual aspects, the necessity to maintain a specific register in the event of cancellation of arrest warrant by the Court, was also discussed by the learned Single Judge in the subsequent paragraphs of the judgment and it was thereafter, that a finding was rendered to the effect that the grievance, if at all any, of the petitioner could be caused to be redressed by other appropriate action for not recalling the un-executed permanent warrant of arrest. Paragraphs 13 and 14 of the judgment passed by the learned Single Judge are also relevant, and hence are extracted below:

“13. I hope and trust that the directions issued by the Supreme Court in **Raghuvansh Dewanchand Bhasin** (supra) regarding recall of unexecuted warrant of arrest and consequential direction of the Director General of Police (Annexure R/5) will be complied with by all the concerned without fail to avoid situation like present.

14. However, Registry is directed to place the matter before the Hon'ble Chief Justice for consideration and / or appropriate action against the concerned Judicial Magistrate for not recalling the unexecuted warrant of

arrest despite the decision and mandate of the Supreme Court in **Raghuvansh Dewanchand Bhasin** (supra), thereby the petitioner remained in jail for some time due to the unexecuted warrant of arrest.”

8. As far as the prayer is concerned, no further 'fact finding exercise' with regard to alleged atrocity done from the part of the police does require to be made in this case, as the police has explained as to what had happened, particularly, that they were never informed as to the recalling of un-executed permanent warrant of arrest, which made them to proceed with further steps to execute the said warrant; ultimately leading to arrest of the person concerned. As submitted before this Court, it is only part of the duty of the police and insofar as the order passed by the learned Magistrate to recall the un-executed permanent warrant of arrest was not communicated to the police, their action cannot be said as illegal or unauthorised in any manner.
9. It is relevant to note that the appellant does not have a case that copy of the Bail order dated 05-01-2019 was ever shown by him to the police, when they came to arrest him on 13-03-2019 on the strength of un-executed permanent warrant of arrest. The learned Government Advocate points out that these aspects are discernible from para 8.9 of the writ petition, which is to the following effect.

“8.9. That, on 13/03/2019 after lapse of about 2 months the Police Marwahi arrested the petitioner saying that permanent warrant of arrest is effective against the petitioner and issued on 20/02/2018 while such warrant had already been cancelled on 05/01/2019 by the JMFC Marwahi. The petitioner was desperately trying to explain by showing the rin pustika wherein it has been mentioned that the bail has been granted to the petitioner and permanent arrest warrant has been cancelled by order dated 05/01/2019, but the Police Marwahi in a malafide manner and vague intentions arrested the petitioner and took him to the Court of JMFC Marwahi link Court Pendra Road. The Police authorities did not bring the petitioner before the said court. Copy of Rojnamcha Sanha no. 433 dated 13/03/2019 and duty certificate are being filed collectively as ANNEXURE P-4”

Reference is also made to Annexure R-4 dated 06-01-2020 filed by the petitioner and these aspects have specifically been considered by the learned Single Judge in 'paragraph 7' of the verdict, which is put to challenge herein.

10. Considering the sequence of events and the materials on record, we do not find it as a fit case to call for interference with the verdict passed by the learned Single Judge. We are not expressing any opinion with regard to the further steps to be pursued by the appellant in connection with the non-communication of the order of the learned Magistrate to the police.

11. With the above observation, writ appeal is dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Pawan