

Jharkhand High Court

Sanjay Kumar Singh & Anr vs State Of Jharkhand on 23 April, 2010

In the High Court of Jharkhand at Ranchi

W.P.(Cr.) No.46 of 2010

1. Sanjay Kumar Singh
2. Ajay Kumar Singh Petitioners

VERSUS

State of Jharkhand Respondent

CORAM: HON'BLE MR. JUSTICE R.R.PRASAD

For the Petitioners : M/s. A.K.Kashyap, Sr. Advocate and Ravi Prakash,
Advocate

For the State : Mr. Jalisur Rahman, J.C to G.P.III

4. 23.4.10

This application has been filed for quashing of the order dated 6.7.1996 passed by the learned Chief Judicial Magistrate, Palamau at Daltonganj in G.R. No.321 of 1986 wherein petitioners have been declared absconder and also the order dated 27.2.2007 passed by the learned Additional Sessions Judge (F.T.C. No.II), Palamau at Daltonganj in Sessions Trial No.252A of 1996 whereby the trial court by virtue of the provision as contained in Section 299 of the Code of Criminal Procedure while directing the record to be deposited in the record room passed an order for issuance of permanent warrant against the petitioners.

Learned counsel appearing for the petitioners submits that the first information report was lodged on 1.3.1986 alleging therein that accused persons in an attempt to kill him fired shot causing injury. The said case was registered as Haidar Nagar P.S. case no.6 of 1986 under Section 307 and other allied sections of the Indian Penal Code and also under Section 27 of the Arms Act against some named accused persons as well as some unknown. While the matter was pending investigation, the petitioners were granted bail by this Court. Subsequently, charge sheet was submitted on 9.5.1989 against the petitioners and some others, upon which cognizance of the offence was taken and the summons were ordered to be issued. Pursuant to that, some of the accused persons appeared, who faced the trial and were acquitted but the petitioners had no knowledge about the submission of the charge sheet as no notice/summons were ever served upon them nor warrant of arrest or even the process issued under Section 82/83 of the Code of Criminal Procedure were ever executed, still the Chief Judicial Magistrate, vide its order dated 6.7.1996 declared the petitioners absconder and committed the case to the court of sessions. When the case was transferred to the court of 1st Additional Sessions Judge, Palamau at Daltonganj, the court, vide its order dated 16.12.1996 passed an order for issuance of permanent warrant of arrest as well as process under Section 82/83 of the Code of Criminal Procedure . Subsequently, it passed an order on 27.2.2007 declaring the petitioners as permanent absconder.

Being aggrieved with the said orders, this writ application has been filed for quashing of the order dated 27.2.2007 passed by the Additional Sessions Judge (F.T.C.No.II), Palamau at Daltonganj and also the order dated 6.7.1996 passed by the Chief Judicial Magistrate, Palamau at Daltonganj .

Mr. A.K.Kashyap, learned Sr. counsel appearing for the petitioners submits that the learned Chief Judicial Magistrate after submission of the charge sheet, though seems to have issued the summons and subsequently, warrant of arrest but without receiving either service report of the summon or the execution report of the warrant of arrest, declared the petitioners as absconder, vide its order dated 6.7.1996 and similarly, when the case was committed to the court of sessions, learned Additional Sessions Judge (F.T.C.No.II), Palamau at Daltonganj also in the same manner without receiving any execution report either of the warrant of arrest or process issued under Section 82/83 of the Code of Criminal Procedure passed an order on 27.2.2007 whereby the petitioners have been declared permanent absconder and hence, both the orders suffer from illegality and are fit to be set aside.

Learned counsel further submits that the submission made above is based on the order sheets of both the courts which have been annexed in this writ application as none of the order passed either by the Chief Judicial Magistrate, Palamau at Daltonganj or by the Additional Sessions Judge(F.T.C No.II), Palamau at Daltonganj would show that at any point of time before issuing warrant of arrest or process under Section 82/83 of the Code of Criminal Procedure had ever received service report of the summons or the execution report of the warrant of arrest.

Submission advance on behalf of the petitioners could not be controverted on behalf of the State.

Having heard learned counsel appearing for the parties and from perusal of the record including the order of the court of Chief Judicial Magistrate, Palamau at Daltonganj and also the court of the Additional Sessions Judge (F.T.C No.II), Palamau at Daltonganj submission advanced on behalf of the petitioners appears to be correct as the learned Chief Judicial Magistrate, Palamau at Daltonganj appears to have issued the order dated 6.7.1996 without receiving service report of the summon or execution report of the warrant of arrest. Similar is the position with respect to the matter as aforesaid concerning the court of the Additional Sessions Judge (F.T.C No.II), Palamau at Daltonganj. Moreover, the order dated 27.2.2007 passed by the Additional Sessions Judge (F.T.C.II), Palamau at Daltonganj itself does indicate that without receiving any execution report of the warrant of arrest or process issued under Section 82/83 of the Code of Criminal Procedure, the petitioners have been declared permanent absconder which is against the provision of the Criminal Procedure Code and, therefore, both the orders dated 6.7.1996 passed by the Chief Judicial Magistrate, Palamau at Daltonganj and the order dated 27.2.2007 passed by the Additional Sessions Judge (F.T.C No.II), Palamau at Daltonganj are hereby set aside.

Accordingly, this application is allowed. However, the petitioners are directed to appear before the court below within three weeks from today.

Let a copy of this order be sent to the court concerned through FAX at the cost of the petitioners.

(R.R. Prasad, J.) ND/