

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 1506 of 2020

Gulfasa Khatoon, age about 23 years, wife of Sheikh Mansur @ Feku,
resident of Chauthai Kulhi, P.O. & P.S. Jharia, District- Dhanbad, Jharkhand
... Petitioner

-Versus-

The State of Jharkhand

... Opposite Party

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Anuj Kumar Trivedi, Advocate
For the Opposite Party-State : Mrs. Vandana Bharti, A.P.P.

04/07.09.2021. Heard Mr. Anuj Kumar Trivedi, learned counsel for the petitioner and Mrs. Vandana Bharti, learned A.P.P. appearing for the opposite party-State.

This criminal miscellaneous petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard on merit.

The petitioner has filed this criminal miscellaneous petition for quashing the order dated 15.07.2016 by which warrant of arrest has been issued against the petitioner as well as for quashing the order dated 26.07.2016 by which process under Section 82 of Cr.P.C. has been issued against the petitioner and for quashing the order dated 06.10.2016 by which process under Section 83 of Cr.P.C. has been issued against the petitioner by the learned Additional Chief Judicial Magistrate, Dhanbad in connection with Jharia P.S. Case No. 100 of 2016, corresponding to G.R. Case No.1571 of 2016.

Learned counsel for the petitioner submits that only on the application of the I.O., warrant of arrest has been issued vide order dated 15.07.2016. He further submits that vide order dated 26.07.2016, process under Section 82 of Cr.P.C. has been directed to be issued, which is a non-speaking order and against the mandate of law. He also submits that vide order dated 06.10.2016, process under Section 83 of Cr.P.C. has been directed to be issued against the petitioner. He further submits that other co-accused persons have filed Cr.M.P. No. 430 of 2020, which has been allowed by this Court vide order dated 15.06.2020.

Mrs. Vandana Bharti, learned A.P.P. for the opposite party-State submits that there is no illegality in the impugned order and the same has been rightly passed.

On perusal of the order dated 15.07.2016, it transpires that only on the application of the I.O., warrant of arrest has been issued and no notice under Section 41A of Cr.P.C. was given to the petitioner prior to issuance of warrant of arrest. The order dated 26.07.2016 is a four line order by which process under Section 82 of Cr.P.C. has been directed to be issued, which is not in terms of the parameters of Section 82 of Cr.P.C. and against the mandate of law in terms of the judgment passed by this Court in the case of ***Md. Rustum Alam @ Rustam and Others v. The State of Jharkhand***, reported in ***2020 (2) JLR 712***. As the order dated 26.07.2016 is bad in law, the order dated 06.10.2016 shall also not survive.

In view of the aforesaid facts, the impugned orders dated 15.07.2016, 26.07.2016 and 06.10.2016 passed by the learned Additional Chief Judicial Magistrate, Dhanbad in connection with Jharia P.S. Case No. 100 of 2016

dated 18.04.2016, corresponding to G.R. Case No.1571 of 2016 are quashed. The matter is remanded to the court of the learned Additional Chief Judicial Magistrate, Dhanbad to proceed afresh strictly in terms of the Cr.P.C.

Accordingly, this criminal miscellaneous petition stands allowed and disposed of.

(Sanjay Kumar Dwivedi, J.)

Ajay/