

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1830 of 2021

Prem Saw @ Prem Sahu Petitioner
Versus
The State of Jharkhand Opposite Party

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Nishant Kumar Roy, Advocate
For the State : Mr. P.D. Agrawal, Advocate.

02/ 08.09.2021 Heard Mr. Nishant Kumar Roy, learned Counsel appearing for the petitioner and Mr. P.D. Agrawal, learned counsel appearing for the State.

2. This 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.

3. This criminal miscellaneous petition has been filed for quashing of the order dated 28.01.2021, whereby, process under Section 82 Cr.P.C. has been directed to be issued against the petitioner and also for quashing of the order dated 19.05.2021, whereby process under Section 83 Cr.P.C. has also been issued against the petitioner, in connection with Senha P.S. Case No. 85 of 2019, pending in the Court of learned S.D.J.M., Lohardaga.

4. Mr. Nishant Kumar Roy, learned counsel appearing for the petitioner submits that the order dated 28.1.2021 is not in accordance with law, as there is no satisfaction recorded by the learned Court while passing such order, which is mandatory and also there is no indication of Form-IV Cr.P.C. He further submits that since the first order is illegal, the second order dated 19.05.2021 is also bad in law.

5. Mr. P.D. Agrawal, learned counsel appearing for the State tried to justify the impugned orders and submits that there is no illegality in these orders.

6. On perusal of the order dated 28.01.2021, it transpires that there is no indication in the ordersheet when the execution of warrant of arrest was done upon the petitioner and the concerned Court has passed the said order without applying any mind. In the ordersheet it is only recorded that the warrant of arrest against the said accused was executed on and the date is not recorded and that portion has been kept blank and thereafter the concerned Court proceeded in this case, which shows that the learned Court has passed the order in a mechanical way. There is no

indication of Form-IV Cr.P.C., which is statutory in nature, as held by this court in *Md. Rustam Alam @ Rustum & Ors. V. The State of Jharkhand*, reported in **2020 (2) JLJR 712**.

7. In view of the aforesaid facts, the order dated 28.01.2021, whereby, process under Section 82 Cr.P.C. has been directed to be issued against the petitioner, in connection with Senha P.S. Case No. 85 of 2019, pending in the Court of learned S.D.J.M., Lohardaga, is hereby, quashed. If the first order is illegal, the second order does not survive. As such the second order dated 19.05.2021, whereby process under Section 83 Cr.P.C. has also been issued against the petitioner, is also quashed.

8. The matter is remitted back to the Court of learned S.D.J.M., Lohardaga to proceed afresh in terms of the Code of Criminal Procedure and the judgment passed by this Court in the case of *Md. Rustam Alam @ Rustam & Ors. (Supra)*.

9. With the aforesaid observation and direction, this criminal miscellaneous petition stands disposed of.

(Sanjay Kumar Dwivedi, J.)