

IN THE HIGH COURT OF JUDICATURE AT PATNA

Ladali Khatoon

vs.

The State of Bihar & Ors.

(Criminal Writ Jurisdiction Case No. 841 of 2021)

30 August, 2023

(Hon’ble Mr. Justice Anil Kumar Sinha)

Issue for Consideration

Whether the writ application is maintainable for issuance of direction to the police authorities to execute the permanent warrant of arrest against absconding accused, despite compliance of Sections 82/83 CrPC and issuance of permanent warrant by the District Court.

Headnotes

All possible steps have been taken by the police as well as learned District Court, including procedure under Sections 82/83 to ensure the presence of the absconder before the learned District Court and permanent warrant of arrest has also been issued against the absconder. (Para 9)

As such, no further direction can be issued by this Court, particularly when the learned District Court has issued permanent warrant of arrest. (Para 10)

Case Law Cited

No specific case cited

List of Acts

Indian Penal Code, 1860 (Sections 493, 307, 34); Dowry Prohibition Act, 1961 (Sections 3, 4); Code of Criminal Procedure, 1973 (Sections 82, 83, 299)

List of Keywords

Permanent Warrant of Arrest; Absconding Accused; Sections 82/83 CrPC; Section 299 CrPC; Dowry Prohibition Act; Dismissal of Writ

Case Arising From

Jamui P.S. Case No. 40 of 1996

Appearances for Parties

For the Petitioner: Mr. Nishant Kumar Sinha

For the Respondents: Mr. Manish Kumar, Dr. Sanjay Parasmani

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.841 of 2021

Arising Out of PS. Case No.-40 Year-1996 Thana- JAMUI District- Jamui

LADALI KHATOON D/o Abul Kalam R/o village- Adsar, P.S.- Jamui,
District- Jamui

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH PRINCIPAL SECRETARY, HOME DEPARTMENT, GOVT. OF BIHAR, PATNA Bihar
2. The Superintendent of Police, Jamui Bihar
3. The Deputy Superintendent of Police, Jamui Bihar
4. The Officer-in-Charge, Jamui Police Station Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Nishant Kumar Sinha
For the Respondent/s	:	Mr.Manish Kumar
		Dr. Sanjay Parasmani

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 30-08-2023

The present writ application has been filed for a direction to the respondents-police authorities to execute the permanent warrant of arrest, issued by learned Additional Sessions Judge, Fast Track Court No. 2, Jamui, dated 30.03.2017, in Sessions Trial No. 568A of 1998 against the absconding accused, Asirum Nisha.

2. A First Information Report, bearing Jamui Police Station Case No. 40 of 1996 was lodged on the basis of fardbayan of the petitioner, Ladli Khatoon, for the offences punishable under Sections 493/307/34 of the Indian Penal Code and Sections 3/4 of



the Dowry Prohibition Act, stating therein that the father of co-accused Md. Sufiyan, namely, Abdul Wadud, approached the petitioner's father to send the petitioner for nursing of his ailing wife with the assurance that she would be married to his son, Md. Sufiyan. On the assurance of the father of co-accused Md. Sufiyan, the petitioner started her nursing work and after eight months, in the evening, co-accused Md. Sufiyan entered into the room of the petitioner and established physical relationship with her on the pretext of marriage. The petitioner narrated the entire occurrence to the mother of co-accused Md. Sufiyan, namely, Anisur Nisha, who also assured the petitioner that the marriage of her son would be solemnized with the petitioner and on such assurance and faith given by the accused persons, she started living with co-accused Md. Sufiyan as husband and wife. On persistence request to perform marriage by the petitioner she was asked to arrange a sum of Rs. 72,000/- in order to purchase a tractor for co-accused Md. Sufiyan for the purpose of his livelihood and the said amount was paid by the petitioner's father. Later on, another demand of Rs. 50,000/- was made from the petitioner and upon refusal to pay the same, she was thrown out of the house.

3. After investigation, the police submitted charge sheet against the accused persons, including the mother of co-accused



Md. Sufiyan, namely, Anisur Nisha, who has been declared as an absconder vide order, dated 22.12.1997 and another co-accused Md Wadud died during the pendency of the trial. Learned Chief Judicial Magistrate, Jamui, took cognizance and committed the case to the court of sessions on 14.05.1998 and the learned Sessions Judge, Jamui, transferred the case to learned Additional Sessions Judge, Fast Track Court No. 2, Jamui, for trial and disposal.

4. Accordingly, Sessions Trial No. 568 of 1998 was registered against accused persons, namely, Md. Anwar, Md. Tabir and Md. Sufiyan, and since the mother of co-accused Md. Sufiyan, namely, Anisur Nisha, was absconding, her trial was separated and was registered as Sessions Trial No. 568A of 1998.

5. From perusal of the order, dated 28.05.2008, passed in Sessions Trial No. 568A of 1998, it appears that after exhausting the procedure of Sections 82/83 of the Code of Criminal Procedure, 1973, records of Sessions Trial No. 568A of 1998 was sent to the record room, recording therein that the evidence recorded in absence of the absconder in Sessions Trial No. 568 of 1998 shall be used under Section 299 of the Code of Criminal Procedure, 1973 on her arrest.



6. On 17.01.2017, a petition was filed by the informant-petitioner, in Sessions Trial No. 568A of 1998, praying therein that on 28.05.2008, the record of Sessions Trial No. 568A of 1998 was sent to record room without issuance of permanent warrant of arrest. On 30.03.2017, the record of Sessions Trial No. 568A of 1998 was produced from the record room and attendance on behalf of the petitioner-informant with fresh vakalatnama was filed. Upon perusal of the record, it was found that the order, dated 28.05.2008, was not complied and permanent warrant of arrest was not issued against the absconder, Anisur Nisha. Accordingly, the learned District Court directed for issuance of permanent warrant of arrest, which was not issued against the absconder, Anisur Nisha.

7. Learned Counsel for the petitioner submits that the respondent authorities have not taken any action against the absconder and failed to produce her before the learned District Court to face trial in Sessions Trial No. 568A of 1998.

8. On the other hand, learned Counsel for the State, referring to the contents of the counter affidavit, argued that all possible steps for ensuring the attendance of the absconder was taken by the police and process of proclamation and attachment, under Sections 82/83 of the Code of Criminal Procedure, 1973, has



also concluded. Recently, on two days after the issuance of the permanent warrant of arrest, i.e. on 27.08.2020 and 09.09.2021, raids were conducted by the police in the house of the absconder, but she was not found in the house. A report in this regard has been annexed in the counter affidavit as Annexure A to the counter affidavit, which has been submitted by the Station House Officer, Jamui, to the Superintendent of Police, Jamui. Spy has also been deputed and utmost steps are being taken to arrest the absconder.

9. Having heard learned Counsel for the parties concerned and taking into consideration the fact that all possible steps have been taken by the police as well as learned District Court, including procedure under Sections 82/83 of the Code of Criminal Procedure, 1973, to ensure the presence of the absconder before the learned District Court and permanent warrant of arrest has also been issued against the absconder.

10. As such, no further direction can be issued by this Court, particularly when the learned District Court, who is in seisin with the matter, has issued permanent warrant of arrest, holding that the evidence recorded in absence of the absconder in Sessions Trial No. 568 of 1998 shall be used under Section 299 of the Code of Criminal Procedure, 1973 on her arrest in Sessions Trial No. 568A of 1998.



11. Accordingly, I do not find any merit in this writ application.

12. This writ application is, accordingly, dismissed.

13. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	24-07-2023
Uploading Date	30-08-2023
Transmission Date	30-08-2023

