

HIGH COURT OF JHARKHAND

Bench: Hon'ble Mr. Justice Sanjay Kumar Dwivedi

Date of Decision: 10.11.2023

W.P.(Cr.) No. 958 of 2023

Vishwamitra Singh

.... Petitioner

-- Versus --

The State of Jharkhand and Another

.... Respondents

Sections, Acts, Rules, and Articles:

Section 82 of the Criminal Procedure Code (Cr.PC)

Section 498A of the Indian Penal Code (IPC)

Subject: Quashing of an order in a case involving Section 498A IPC, with reference to the procedures and guidelines related to issuing processes under Section 82 Cr.PC and anticipatory bail considerations.

Headnotes:

Writ Petition – Quashing of Order – Quashing of order dated 20.10.2023 in Dhanbad Mahila P.S. Case No.30 of 2023 under section 82 Cr.PC – Petitioner, the husband in a case under section 498A IPC, had already complied with notice under section 41A Cr.PC and appeared before the investigating officer – Petitioner's non-pressing of prayer-(a) and focusing on prayer-(b) for quashing the impugned order. [Para 5]

Anticipatory Bail – Denial of Anticipatory Bail by Sessions Court and High Court – Petitioner's A.B.P. No.3077 of 2023 rejected by Sessions Judge and A.B.A. No.9253 of 2023 dismissed as withdrawn in High Court – Compulsion to withdraw due to issuance of process under section 82 Cr.PC. [Para 5, 7]

Supreme Court Guidelines – Reference to Supreme Court judgments in Satender Kumar Antil v. C.B.I (2022) and Arnesh Kumar v. State of Bihar (2014) – Emphasis on guidelines regarding issuing process under section 82 Cr.PC and arrest procedures in cases under section 498A IPC. [Para 5, 7]

Judicial Review – High Court's consideration of petitioner's compliance with legal procedures and Supreme Court guidelines – Setting aside of impugned order dated 20.10.2023 and remittance of matter to the lower court for fresh proceedings in accordance with the law. [Para 7, 8, 9]

Referred Cases:

- Satender Kumar Antil v. C.B.I, (2022) 10 SCC 51
- Arnesh Kumar v. State of Bihar, (2014) 8 SCC 723

Representing Advocates:

For the Petitioner: Mr. R.S. Mazumdar, Senior Advocate; Mr. Sudhansu Kumar Deo, Advocate; Mr. Nishant Roy, Advocate

For the State: Mr. Mrinal Kanti Roy, Advocate

For the Respondent No.2: Mr. M.B. Lal, Advocate

10.11.2023

1. Mr. M.B.Lal, the learned counsel has appeared suo-motu on behalf of the informant.
2. The learned counsel for the petitioner shall array the informant as respondent no.2 in the writ petition in course of the day.
3. With consent of the parties, this matter has been heard on merit.
4. Heard Mr. R.S. Mazumdar, the learned Senior counsel appearing on behalf of the petitioner, Mr. M.B. Lal, the learned counsel appearing on behalf of the informant and Mr. Mrinal Kanti Roy, the learned counsel appearing on behalf of the respondent State.
5. Mr. Mazumdar, the learned Senior counsel appearing on behalf of the petitioner submits that so far prayer-(a) is concerned he is not pressing the petition and he will take recourse under the law and so far as prayer-(a) is concerned. He confines his prayer to prayer-(b) with regard to the quashing of the order dated 20.10.2023 passed in connection with Dhanbad Mahila P.S. Case No.30 of 2023, whereby learned court has been pleased to issue process under section 82 Cr.PC and pending in that Court. He submits that the case is registered under section 498A and other sections of IPC and the petitioner is the husband and so far as other family members are concerned they have been granted anticipatory bail. He submits that the petitioner has received notice under section 41A Cr.P.C and has appeared before the investigating officer on 10.06.2023 and has recorded his version. He submits that the petitioner has moved before the learned Sessions Judge in A.B.P.

No.3077 of 2023 which was rejected on 29.9.2023. He further submits that the petitioner has moved before this Court in A.B.A. No.9253 of 2023 which was dismissed as withdrawn because in the meantime the learned court has passed the impugned order whereby the processes under section 82 Cr.P.C has been issued. He submits that the petitioner is not evading the arrest. He has taken recourse in the relevant provisions of the Cr.P.C and he submits that there are several guidelines by the Hon'ble Supreme Court on issuing the process under section 82 Cr.P.C and recently by one of the judgment it was again reiterated by the Hon'ble Supreme Court in the case of **Satender Kumar Antil v. C.B.I, (2022) 10 SCC 51**. This aspect of the matter has been considered in paragraph nos.23 to 25, 27, 28, 29 and 30 of the said judgment. On this ground he submits that the impugned order may kindly be set aside.

5. The said argument is being resisted by Mr. Roy, the learned counsel for the respondent State by way of referring the impugned order. He submits that the learned court has taken note of the fact that how many days and at what place the police has gone to find out the petitioner and thereafter has passed the order and the order is a reasoned one and this Court may not quash the proceeding.
6. The said argument has been adopted by Mr. M.B. Lal, the learned counsel for the respondent no.2. Both the counsels submit that this writ petition is fit to be dismissed.
7. This Court finds that the petitioner has already appeared before the investigating officer pursuant to notice under section 41A Cr.P.C on 10.6.2023. The petitioner has taken recourse under Cr.P.C and he has moved before the learned Sessions in A.B.A and during the pendency of the A.B.A the impugned order has been passed and in view of that the petitioner has been compelled to withdraw the A.B.A vide order dated 02.11.2023. In view of that, it appears that the petitioner has taken recourse under the

Cr.P.C. He has already moved before the learned Sessions Judge as well as High Court and appeared before the investigating officer pursuant to notice under section 41 A of the Cr.P.C as to how the arrest and coercive measures should be taken place in the case of **Satender Kumar Antil (supra)** has been mentioned and further this aspect of the matter if the case is arising out of section 498A IPC was earlier considered by the Hon'ble Supreme Court in the case of **Arnesh Kumar v. State of Bihar, (2014) 8 SCC 723**.

8. In view of the above, the impugned order dated 20.10.2023 is set aside.
9. The matter is remitted back to the learned court concerned to proceed afresh in accordance with law.

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