

IN THE HIGH COURT OF JHARKHAND, RANCHI

Cr.M.P. No. 707 of 2021

1.Khubhi Mahto @ Khugi Mahto, s/o late Yugal Mahto, aged about 63 years
 2.Ranjit Prasad @ Ranjeet Kumar, s/o Khubhi Mahto, aged 28 years
 3.Kalawati Devi, w/o Khubhi Mahto, aged about 61 years
 All r/o village Chandra Marani, PO and PS Sariya, District Giridih Petitioners
 -- Versus --
 The State of Jharkhand Opposite Party

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners :- Mr. Yogesh Modi, Advocate
 For the State :- Mr. Vishambhar Shastri, APP

3/22.06.2021 Heard Mr. Yogesh Modi, the learned counsel for the petitioner and Mr. Vishambhar Shastri, the learned State counsel.

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. The learned counsel for the petitioners is directed to remove the defects within two weeks. If the defects are not removed, the office shall list the matter before the appropriate Bench.

4. The petitioner has filed this petition for quashing the orders dated 06.04.2019, 11.09.2019 and order dated 11.02.2021 passed in Cr. Rev. No.52 of 2020.

5. Mr. Yogesh Modi, the learned counsel appearing for the petitioner assailed the impugned order on the ground that on 14.02.2017 bailable warrant was issued against the witnesses and the next date was fixed on 04.04.2017 and the petitioners were absent. No PWs were present for evidence and the next date fixed was 23.05.2017. On 01.05.2017 the records of the case was transferred to the court of

Judicial Magistrate, 1st Class, Giridih. The conducting counsel for the petitioners left Giridih and settled in Tenughat and the petitioners could not locate the case. On 13.08.2018 the case was transferred to the court of learned SDJM, Giridih and on 27.09.2018 again the case was transferred to the court of Sri Nishi Kant Judicial Magistrate, 1st Class, Giridih. He submits that as the conducting lawyer was shifted to Tenughat the petitioner have not been able to locate the file. He further submits that after framing of charge w.e.f. 14.09.2015 till 14.02.2017 the petitioners regularly attended the court proceeding but no witnesses turned up for the prosecution in the case. He submits that by order dated 01.11.2017 bail bonds of the petitioners were cancelled and non-bailable warrant was issued. He submits that at the outset bailable warrant is required to be issued. He further submits that there is no report of service of execution of non-bailable warrant. He further submits that straight way without awaiting the service report of non-bailable warrant process under section 82 Cr.PC was issued by order dated 06.04.2019 and by order dated 11.09.2019 process under section 83 Cr.PC has also been issued against the petitioners. He further submits that there is no satisfaction of the Magistrate while issuing the processes under section 82 and 83 Cr.PC. According to him the guidelines of this Court as held in the case of "*Md. Rustum Alam @ Rustam v. State of Jharkhand*" reported in 2020 (2) JLJR 712 has not been followed.

6. Mr. Shastri, the learned counsel appearing for the respondent State tried to justify the impugned orders and submits that there is no illegality in the impugned orders.

7. In view of the above facts and considering the order sheets which have been annexed with the petition, it transpires that after cancellation straightway non-bailable warrant has been issued without awaiting the execution of service report under section 82 Cr.PC and

process under section 83 Cr.PC has been issued. The guidelines issued by this Court in "*Md. Rustum Alam @ Rustam v. State of Jharkhand*" reported in *2020 (2) JLJR 712* has not been followed.

8. Accordingly, impugned orders dated 06.04.2019, 11.09.2019 and order dated 11.02.2021 are quashed. The petitioners are directed to appear before the court below on or before 26.07.2021 and the court below will consider the case of the petitioners considering that earlier the petitioners were appearing regularly.

9. Cr.M.P. No. 707 of 2021 stands disposed of.

(Sanjay Kumar Dwivedi, J)

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