

BIHAR HUMAN RIGHTS COMMISSION

9, Bailey Road, Patna

File Nos. BHRC/Comp. 3445/12

Case of Ganpat Rajak: (Case of illegal detention)

13.4.2015

Petitioner not present. SDM Jamui, Mr. Ramendra Kumar present.

This is the case of a person (Ganpat Rajak) who was arrested on the orders of the then SDM, Jamui, Mr. Amlendu Kr. Singh on 3rd September, 2012 and then ordered to be released by him on 5th September, 2012.

The present SDM, Jamui, Mr. Ramendra Kumar has produced the record which shows that proceeding had been initiated against several persons u/s 107 Cr.P.C. on 13th March, 2012. Some proceedings took place and according to SDM Jamui an order was passed u/s 113 Cr.P.C. on 11th June 2012. I have perused the order. The order records absence of two persons and the magistrate issued warrant of arrest against them. It appears one of the persons appeared subsequently and the warrant was recalled. One of the persons, namely, Ganpat Rajak did not appear and police arrested him on 3rd September, 2012. He was produced before magistrate on 5th September, 2012 and then he was released.

The person remained in custody for three days from 3rd to 5th September, 2012 the police also did not produce the person before the magistrate within 24 hours. However, the basic fault lies with the then SDM, Jamui who issued a warrant of arrest u/s 113 Cr.P.C. Section 113 Cr.P.C. empowers a magistrate to issue a summon to a person if he is not present in an inquiry when an order u/s 111 Cr.P.C. has been passed.

Only in two cases a warrant of arrest can be issued u/s 113 Cr.P.C.:-

- (i) The person whose presence is sought is already in custody

- (ii) Where a magistrate has received report or information which he records and on the basis of which he records satisfaction that there is reason to fear the commission of break of peace and that such breach of peace cannot be prevented otherwise then by the immediate arrest of such person.

There is no such report or information received by magistrate and in fact – no report was received from police. The proceedings had been initiated u/s 107 Cr.P.C. on 13th March, 2012 and the warrant was issued on 11th June, 2012.

Obviously, there was no urgency as nothing had happened in between 13th March 2012 and 11th June, 2012. It appears that the then SDM, Jamui, Mr. Amlendu Kr. Singh passed orders of arrest routinely as the persons who were summoned did not appear before him. Right of freedom is basic to the citizens of this country and nobody can be deprived of his liberty by any authority of law including the courts without sanction of law.

The concerned magistrate was also summoned. He has filed his explanation. Perhaps the magistrates have not been duly trained with respect to powers and the mode of exercise of powers by them. Therefore, no action is recommended against the then SDM, Jamui. However, it is a fact that a person was deprived of his liberty for three days without authority of law, a compensation of Rs.30,000 be paid to him immediately.

A copy of this order be sent to the Chief Secretary who may direct the circulation of this order to all Executive Magistrates in the State for their future guidance.

The petitioner be provided with a copy of this order as also the Principal Secretary, Home regarding payment of compensation.

(Justice Bilal Nazki)
Chairperson