

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.33 of 2024

 Vivek Kumar, aged about 30 yrs. S/o Vinay Singh, R/O Balihari,
 P.O. & P.S. Mohanpur, Dist. Gaya (Bihar). ... Petitioner

Versus

The State of Jharkhand ... Opposite Party

 For the Petitioner : Mr. Shailesh Kumar Singh, Advocate
 Mr. Abhijeet Kr. Singh, Advocate
 For the State : Mr. Subodh Kr. Dubey, Addl. P.P.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with a prayer to quash the order dated 23.11.2023 passed by the learned J.M.-1st Class, Dhanbad in connection with Dhansar P.S. Case No.279 of 2018 registered for the offence punishable under Sections 419, 420, 406 of the Indian Penal Code by which non-bailable warrant of arrest has been issued against the petitioner and also the order dated 05.12.2023 passed by the learned J.M.-1st Class, Dhanbad in connection with Dhansar P.S. Case No.279 of 2018 by which proclamation under Section 82 of Cr.P.C. has been issued against the petitioner and the said case is now pending in the court of learned J.M.-1st Class, Dhanbad.

3. Learned counsel for the petitioner abandons his prayer to quash the order dated 23.11.2023 passed by the learned J.M.-1st Class, Dhanbad in connection with Dhansar P.S. Case No.279 of 2018 registered for the offence punishable under Sections 419, 420, 406 of the Indian Penal Code by which

non-bailable warrant of arrest has been issued against the petitioner and confines his prayer only to quash the order dated 05.12.2023 passed by the learned J.M.-1st Class, Dhanbad in connection with Dhansar P.S. Case No.279 of 2018 by which proclamation under Section 82 of Cr.P.C. has been issued against the petitioner.

4. Learned counsel for the petitioner submits that the proclamation under Section 82 of Cr.P.C. has been issued without following the due process of law and without recording the satisfaction that the petitioner is absconding or concealing himself to evade his arrest which is a *sine qua non* for issuing proclamation under Section 82 of Cr.P.C. and without fixing any time and place for the appearance of the petitioner who is the accused person of the said case. Hence, it is submitted that the order dated 05.12.2023 passed by the learned In-charge J.M.-1st Class, Dhanbad in connection with Dhansar P.S. Case No.279 of 2018 by which proclamation under Section 82 of Cr.P.C. has been issued against the petitioner; being not in accordance with law, be quashed and set aside.

5. Learned Addl.P.P. appearing for the State vehemently opposes the prayer for quashing the order dated 05.12.2023 passed by the learned In-charge J.M.-1st Class, Dhanbad in connection with Dhansar P.S. Case No.279 of 2018 by which proclamation under Section 82 of Cr.P.C. has been issued against the petitioner and submits that the very fact that the learned In-charge J.M.-1st Class, Dhanbad has issued the proclamation under Section 82 of Cr.P.C. itself shows that there were materials available in the record for the learned In-charge J.M.-1st Class, Dhanbad to be satisfied that there is justification for issuance of such proclamation and proceeding. Hence, it is submitted that this Cr.M.P., being without any merit, be dismissed.

6. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that by now it is a settled principle of law that the court which issues the proclamation under Section 82 of Cr.P.C. must record its satisfaction that the accused in respect of whom the proclamation under Section 82 of Cr.P.C. is made, is absconding or concealing himself to evade his arrest and in case the court decides to issue proclamation under Section 82 of Cr.P.C. it must mention the time and place for appearance of the petitioner in the order itself by which the proclamation under Section 82 of Cr.P.C. is issued. As already indicated above since the learned In-charge J.M.-1st Class, Dhanbad has neither recorded its satisfaction that the petitioner is absconding or concealing himself to evade his arrest nor fixed any time or place for appearance of the petitioner, this Court has no hesitation in holding that the learned In-charge J.M.-1st Class, Dhanbad has committed illegality by issuing the said proclamation under Section 82 of Cr.P.C. without complying with the mandatory requirements of law. Hence, the same is not sustainable in law and the continuation of the same will amount to abuse of process of law. Therefore this is a fit case where the order dated 05.12.2023 passed by the learned In-charge J.M.-1st Class, Dhanbad in connection with Dhansar P.S. Case No.279 of 2018 by which proclamation under Section 82 of Cr.P.C. has been issued against the petitioner, be quashed and set aside.

7. Accordingly, the order dated 05.12.2023 passed by the learned In-charge J.M.-1st Class, Dhanbad in connection with Dhansar P.S. Case No.279 of 2018 by which proclamation under Section 82 of Cr.P.C. has been issued against the petitioner, is quashed and set aside.

8. The learned In-charge J.M.-1st Class, Dhanbad may pass a fresh order in accordance with law.

9. Before parting it is pertinent to mention here that this kind of reckless order has been passed by the learned In-charge J.M.-1st Class, Dhanbad has put an illegible signature in spite of repeated orders passed by this Court not to pass such illegal orders; without following the due process of law and without application of mind. This kind of orders only enhance the burden of this Court unnecessarily.

10. Let a copy of this judgment be sent to the learned Principal District Judge, Dhanbad to impress upon and warn the Judicial Magistrate concerned in administrative side not to pass such reckless order in future.

11. In the result, this Cr.M.P. stands allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 31st of January, 2024
AFR/ Animesh