

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 6 of 2023

Anita Devi (aged about 50 years), wife of Rajendra Giri, resident of village -Phuruka, P.O. -Ichak, P.S. -Ichak, District -Hazaribagh.

.... Petitioner

Versus

1. The State of Jharkhand
2. Sarita Devi, wife of Sakenndra Giri, resident of village -Bihari, P.O. - Padma, P.S. -Padma O.P., District -Hazaribagh.

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner	: Mr. Ram Lakhan Yadav, Advocate
For the State	: Mrs. Ruby Pandey, Addl. P.P.
For the O.P. No.2	: Mrs. Savita Kumari, Advocate

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By the Court:-

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with a prayer to set aside the order dated 12.03.2019 and 22.04.2019 by which respectively the proclamation under Section 82 Cr.P.C. and the attachment order Section 83 Cr.P.C. has been issued against the petitioner and prayer has also been made to quash the cognizance order dated 25.04.2019, passed by the S.D.J.M., Hazaribagh in connection with Ichak P.S. Case No.185 of 2018 corresponding to G.R. Case No. 350 of 2020.
3. The brief facts of the case is that on 12.03.2019, the I.O. of the case submitted an application for issuance of proclamation under Section 82 Cr.P.C. and the learned S.D.J.M., Hazaribagh without recording its satisfaction that the petitioner is absconding or concealing herself to evade her arrest and without fixing time and place for of

appearance of the accused persons, issued the proclamation under Section 82 Cr.P.C. On 22.04.2019, the I.O. of the case intimated the S.D.J.M., Hazaribagh that the petitioner who is the accused person of the case is absconding to evade her arrest and prayed for attachment of the property of the petitioner who is the accused persons of the case and the learned S.D.J.M., Hazaribagh passed the said order. Consequent upon submission of charge sheet against the accused – Papu Giri, vide order dated 25.04.2019, the learned S.D.J.M. found prima facie case for the offence punishable under Section 304B/34 and took cognizance against him.

4. It is submitted by the learned counsel for the petitioner that the proclamation under Section 82 Cr.P.C. has been issued vide order dated 12.03.2019 without following the due process of law and without recording the satisfaction that the petitioner is absconding or concealing herself to evade her arrest which is a *sine qua non* for issuing proclamation under Section 82 of Cr.P.C. and without fixing the time and place for appearance of the accused persons. It is next submitted that so far as the order dated 22.04.2019 is concerned, the learned S.D.J.M., Hazaribagh without any information available in the record that the proclamation under Section 82 Cr.P.C. was ever, passed the order for attachment of the property of the petitioner under Section 83 of Cr.P.C. without mentioning the property to be attached. It is next submitted by the learned counsel for the petitioner that on 04.03.2020, supplementary charge sheet was submitted against the petitioner, accordingly the cognizance which was taken earlier vide order dated 25.04.2019 was ordered to be applicable to the petitioner as well. It is next submitted by the learned counsel for the petitioner that the petitioner is suffering from

severe ailment and the co-accused –Papu Giri, who faced the trial has been acquitted vide Judgment dated 04.10.2019 in Sessions Trial No. 199 of 2019. Hence, it is submitted that the order dated 12.03.2019 and 22.04.2019 by which respectively the proclamation under Section 82 Cr.P.C. and the attachment order Section 83 Cr.P.C. has been issued against the petitioner and order dated 25.04.2019 by which cognizance has been taken inter-alia against the petitioner, passed by the S.D.J.M., Hazaribagh in connection with Ichak P.S. Case No.185 of 2018 corresponding to G.R. Case No. 350 of 2020 be quashed and set aside.

5. Learned Addl. P.P. and the learned counsel for the opposite party no.2 on the other hand vehemently oppose the prayer for quashing the order dated 12.03.2019 and 22.04.2019 by which respectively the proclamation under Section 82 Cr.P.C. and the attachment order Section 83 Cr.P.C. has been issued against the petitioner and order dated 25.04.2019 by which cognizance has been taken inter-alia against the petitioner, passed by the S.D.J.M., Hazaribagh in connection with Ichak P.S. Case No.185 of 2018 corresponding to G.R. Case No. 350 of 2020 and submits that the very fact that the learned S.D.J.M., Hazaribagh has issued the proclamation under Section 82 of Cr.P.C. and the order of attachment under Section 83 of Cr.P.C. itself shows that there were materials available in the record for the learned S.D.J.M., Hazaribagh to be satisfied that there is justification for issuance of such proclamation and attachment order. So far as the order dated 25.04.2019 is concerned, it is submitted by the learned Addl. P.P. and the learned counsel for the opposite party no.2 that the same relates to the co-accused –Papu Giri and the petitioner has no *locus standi* to challenge the said order more over

there is direct and specific allegation against the petitioner for having committed the offences punishable under Section 304B of the Indian Penal Code and undisputedly the deceased daughter-in-law of the petitioner died otherwise than under normal circumstances and there is a allegation of demand of dowry from her inter alia by the petitioner, hence there is no illegality in the order dated 04.03.2020 by which cognizance earlier taken was directed to be applicable to the petitioner as well. Hence, it is submitted that this criminal miscellaneous petition 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 S.D.J.M., Hazaribagh 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 S.D.J.M., Hazaribagh has committed illegality by issuing the said proclamation under Section 82 of Cr.P.C. without complying 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 12.03.2019 by which the proclamation under Section 82 Cr.P.C. has been issued against the petitioner by the S.D.J.M., Hazaribagh in connection with Ichak P.S. Case No.185 of 2018 corresponding to G.R. Case No. 350 of 2020 be quashed and set aside.

7. Accordingly, the order dated 12.03.2019 by which the proclamation under Section 82 Cr.P.C. has been issued against the petitioner by the S.D.J.M., Hazaribagh in connection with Ichak P.S. Case No.185 of 2018 corresponding to G.R. Case No. 350 of 2020 is quashed and set aside.
8. So far as the order dated 22.04.2019 by which the attachment order Section 83 Cr.P.C. has been issued against the petitioner by the S.D.J.M., Hazaribagh in connection with Ichak P.S. Case No.185 of 2018 corresponding to G.R. Case No. 350 of 2020 is concerned, it is a settled principle of law that the court issuing proclamation under Section 82 of Cr.P.C. may for reasons to be recorded in writing at any time after the issue of proclamation, may order for attachment of any property movable or immovable or both belonging to the accused person. Now, in the absence of any material in the record to suggest that the proclamation under Section 82 of Cr.P.C. was in fact made in accordance with law, certainly the learned S.D.J.M., Hazaribagh committed illegality by passing the order of attachment of property of the petitioner without mentioning the description of the property to be attached and without recording any reason in writing about the need for passing such order of attachment. Under such circumstances, this Court has no hesitation in holding that the order dated 22.04.2019 by which the attachment order under Section 83

Cr.P.C. has been issued against the petitioner by the S.D.J.M., Hazaribagh in connection with Ichak P.S. Case No.185 of 2018 corresponding to G.R. Case No. 350 of 2020 is not in accordance with law and continuation of the same will amount to abuse of process of law and this is a fit case where the order dated 22.04.2019, passed by the learned S.D.J.M., Hazaribagh in the said case be quashed and set aside.

9. Accordingly, the order dated 22.04.2019 by which the attachment order under Section 83 Cr.P.C. has been issued against the petitioner by the S.D.J.M., Hazaribagh in connection with Ichak P.S. Case No.185 of 2018 corresponding to G.R. Case No. 350 of 2020 is quashed and set aside.
10. The learned S.D.J.M., Hazaribagh may pass a fresh order in accordance with law.
11. So far as the order dated 25.04.2019 is concerned, the same has been passed in respect of the co-accused -Papu Giri which order of cognizance vide order dated 04.03.2020 has been directed to be applicable to the petitioner as well consequent upon submission of supplementary charge sheet against her. The undisputed fact in the record being the deceased is the daughter-in-law of the petitioner and the deceased died within seven years of her marriage otherwise than under normal circumstances and there is allegation of demand of dowry against the petitioner; and these allegations are sufficient to constitute the offence punishable under Section 304B of the Indian Penal Code against her. Hence, this Court do not find any illegality in the order dated 25.04.2019. Therefore, the prayer to quash the order dated 25.04.2019 is rejected.

12. So far as the interlocutory application no. 10819 of 2023 is concerned, the same has been filed inter-alia with a prayer to quash the order dated 24.03.2020, 12.03.2019 and 22.04.2019 in view of the acquittal order passed in respect of the co-accused -Papu Giri, as by a reasoned order this Court has already allowed the prayer for quashing the order dated 12.03.2019 and 22.04.2019 and rejected the prayer to allow the cognizance order, hence this interlocutory application is disposed of being infructuous.
13. This criminal miscellaneous petition is disposed of accordingly.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 28th February, 2024
AFR/Sonu-Gunjan/-