

In the court of District & Addl. Sessions Judge, Biraul, Darbhanga.

Present:- Sri Shiv Kumar

Dist. & Addl. Sessions Judge, Biraul

Criminal Revision No. 03 of 2026(Deepak Rai and others vs. State of Bihar)

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In the court of District & Addl. Sessions Judge, Biraul, Darbhanga.

Present:-

Sri Shiv Kumar

Dist. & Addl. Sessions Judge

Sub Divisional Courts, Biraul, Darbhanga.

Benipur, Dated 27th of May, 2026.

Criminal Revision No. 03 of 2026

- 1. Deepak Rai, S/o- Panchanand Rai**
 - 2. Munni Lal Rai alias Dilip Rai, Son of Panchanand Rai**
 - 3. Amarjeet Rai, Son of Suresh Rai**
 - 4. Santosh Rai alias Priyanand Rai, Son of Suresh Rai**
 - 5. Aravind Rai, Son of Brahamdeo Rai**
 - 6. Chandra Shekhar Rai, Son of Ganga Rai**
 - 7. Ram Sakal Rai, Son of Ram Bilash Rai**
 - 8. Brahmdev Rai, Son of Ramroop Rai**
- Resident of Village- Ujuawa, P.S.- K.Asthan, Distt.-Darbhanga.**

.....***Revisionists.***

Versus,

- 1. The State of Bihar.**
- 2. Ram Babu Rai, Son of Jai Prakash Rai**

..... ***Opposite Party.***

Counsel for Revisionist- Sri Swatantra Kumar Mishra, Ld. Advocate.

Counsel for State- Sri Bachcha Rai, Ld. A.PP.

Counsel for O.P.2- Nemo.

ORDER

27-05-2026. The present Criminal Revision has been preferred by the aforesaid revisionists-petitioners against the impugned order dated 23-10-2024

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passed by SDJM, Biraul in connection with TR No. 941 of 2024; GR No. 654/2009 arising out of Kuseshwar Asthan PS case No. 250 of 2009 titled as State vs. Deepak Ray and others whereby the Ld. SDJM, Biraul has declared absconder to the petitioners/revisionists.

Heard the learned counsel for the revisionist-petitioners, the learned counsel for the State and perused the case record as well as relevant documents as annexed with this criminal revision petition.

The brief fact of the case is that Kuseshwar Asthan PS case No. 250 of 2009 dt. 14.10.2009 has been lodged by the informant Ram Babu Rai against the petitioners(aforesaid) for the offences committed u/s 147, 324, 447, 379 of IPC and 27 of Arms Act. After that, investigation carried out and after completion of investigation the police has submitted charge-sheet being No. 303/09 dt. 31.12.2009 against the revisionists/petitioners. Thereafter, the Ld. SDJM, Biraul after perusing all the relevant materials available on records has found that a prima facie case is made out against the petitioners. Accordingly, he has taken cognizance by its order dt. 18.05.2011 for the offences punishable U/Ss 147, 149, 447, 341, 323, 324, 504 of IPC and transferred the case to the Court of Sri Sudhir Singh, JMFC, Biraul at Benipur and directed office to issue summons against the accused persons. From perusal of the order-sheets which is annexed with this criminal revision it appears that summons have been issued against the petitioners on 01.12.2011. After that the Magistrate has ordered to issue Baialble Warrants against the accused persons by its order dt. 03.02.2012 which has been issued on 27.01.2014. Thereafter the Ld. Magistrate issued NBW against the accused persons by its order dt. 02.05.2014. Ld. Magistrate again directed to issue NBW against accused persons on 11.04.2016 which has been issued on 04.08.2017. After that the

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Ld. Magistrate has issued processes u/s 82 and 83 Cr.P.C. against the accused persons by its order dt. 11.09.2024 which has been issued on 25.09.2024. When the accused persons have not appeared before the Court then the Ld. ACJM-II, Biraul has declared accused persons as absconder by its order dt. 23.10.2024 and ordered for issuance of permanent warrant against them which has been issued on 23.10.2024 which is under challenge through present petition.

The learned counsel for the revisionist/petitioner has argued that impugned order is bad in law and as well as on facts. It has been submitted that the petitioners have no knowledge of any court order through which summons, warrants and proclamation u/s 82 and 83 of Cr.P.C. has been issued. None of these orders/summons/warrants have ever been served upon him. The proclamation issued u/s 82 through order dt. 21.09.2021 has not been passed in accordance with law. He submits that the impugned order declaring the revisionist(petitioners herein) absconder/proclaimed offender and issuing permanent warrant is wholly illegal, arbitrary and contrary to the provisions of law. It is submitted that after taking cognizance the Ld. Magistrate successively issued summons, bailable warrant, non bailable warrant and thereafter processes under sections 82 and 83 Cr.P.C. However, none of the aforesaid processes was ever served upon the revisionist. The revisionist had no knowledge whatsoever regarding the pendency of the case or the issuance of any process against him. It is further submitted that a bare perusal of the ordersheet(certified copies annexed with the petition) would reveal that no execution report in respect of the summons, bailable warrants, non bailable warrant, proclamation under section 82 Cr.P.C. or attachment under section 83 Cr.P.C. was ever received by the Ld. Court. In absence of any service report or execution report, there was no material before the Ld. Magistrate to record

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satisfaction that the revisionist had deliberately avoided service of process or was absconding to evade arrest. Ld. Counsel contends that despite the absence of execution reports, the Ld. Magistrate mechanically proceeded to issue successive coercive processes one after another. The mandatory preconditions for issuance of proclamation under section 82 Cr.P.C. were not fulfilled, as there was no material to establish that the revisionist had absconded or was concealing themselves so that the warrant could not be executed. It is further submitted that before declaring a person absconder, the Court is required to record its satisfaction on the basis of materials available on record that the accused has absconded or is intentionally evading execution of warrant. In the present case, no such satisfaction could have been validly recorded in absence of execution reports of the warrants and proclamation proceedings. The impugned order, therefore, suffers from serious procedural irregularity and non application of judicial mind. The declaration of the revisionist as absconder and the consequential issuance of permanent warrant have been made without compliance with the mandatory provisions of law and are liable to be set aside.

The learned counsel for the State opposed the aforesaid prayer of the petitioners and submitted that the impugned order dt. 23.10.2024 has been passed in accordance with law. He submits that the Ld. Magistrate has passed the impugned order after granting sufficient opportunities to the accused persons to appear before the Court. It is submitted that despite pendency of the criminal proceeding for a considerable period of issuance of successive coercive processes, the accused persons failed to appear before the Court and thereby obstructed the progress of the case. Therefore the present petition should be dismissed.

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After hearing both sides and from perusal of case records this Court finds that after taking cognizance, the Ld. Magistrate successively issued summons, bailable warrant, non-bailable warrant and thereafter initiated proceeding under sections 82 and 83 Cr.P.C., ultimately declaring the revisionists absconder and issuing permanent warrant against them. However, on careful scrutiny of the order sheets, it appears that no execution report regarding service of summons, execution of bailable warrant, non-bailable warrant, proclamation under section 82 Cr.P.C. or attachment under section 83 Cr.P.C. is available on record. There is no material to indicate that the aforesaid processes were duly served or executed against the revisionists.

The provisions relating to proclamation and attachment are coercive in nature and can be resorted to only upon fulfillment of the statutory requirements prescribed by law. Before issuing a proclamation under section 82 Cr.P.C. the court must be satisfied on the basis of material available on record that the accused has absconded or is concealing himself so that the warrant cannot be executed. Such satisfaction has to be founded upon objective materials and cannot be based merely upon the non appearance of the accused.

The relevant sections in order to decide the issue at hand is section 82 of Cr.P.C. which reads as: **Section 82 Proclamation for persons absconding**

1. If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specific place and at a specified time not less than thirty days from the date of publishing such proclamation.

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2. The proclamation shall be published as follows— (i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides; (b) it shall be affixed to some conspicuous part of the house or home-stead in which such person ordinarily resides or to some conspicuous place of such town or village; (c) a copy thereof shall be affixed to some conspicuous part of the Court house; (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

3. A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of Sub-Section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

4. Where a proclamation published under Sub-Section (1) is in respect of a person accused of an offence punishable under section [302](#), [304](#), [364](#), [367](#), [382](#), [392](#), [393](#), [394](#), [395](#), [396](#), [397](#), [398](#), [399](#), [400](#), [402](#), [436](#), [449](#), [459](#) or [460](#) of the Indian Penal Code (45 of 1860) and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

5. The provisions of Sub-Sections (2) and (3) shall apply to a declaration made by the Court under Sub-Section (4) as they apply to the proclamation published under Sub-Section (1). The form of proclamation requiring the appearance of accused persons as per section 82 of Cr.P.C. is prescribed under Form No. 4 mentioned in second schedule of Cr.P.C., 1973 (as amended up to date).

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Thus, from the reading of section 82 of the code, it is clear that at first the Court has to have sufficient materials before him to reach to a conclusion culminating into its believe that a person, against whom warrant of arrest has been issued, is absconding or is concealing himself. Second and it is not possible for authorities to execute the warrant of arrest. This satisfaction has to be recorded in the order while issuing processes u/s 82 of the Code. Non-recording of subjective satisfaction in the order will make the order bad and a non-speaking one. A non-speaking order involving a procedure, which attracts a penal offence (if the order is not complied with), cannot be sustained in the eyes of law. Further Sub-section (1) of Section 82 of the code provides that the Court has to publish the written proclamation requiring the person to appear on a specified date and specified place not less than 30 days from the date of such publication. Thus, it is the duty of the Court to mention the specific place, date and time where the person needs to present himself in compliance of the proclamation order. This date and place should be mentioned in the order itself as per Form IV, mentioned in the Second Schedule of Code. The said form provides that proclamation should mention the place and date, for the person to appear in compliance of the order. This is a statutory form. This form is to be filled by the Office of the Court. Thus, the date and place is mentioned in the said form must also be reflected in the corresponding order through which proclamation has been issued. The Form IV, which is statutory form, must be scrupulously followed and filled up as per its specification regarding the date, time and place.

In the present case, the records do not disclose any execution report of the warrants issued against the revisionist. In absence of any such report, there was no material before the Ld. Magistrate to arrive at a judicial satisfaction that

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the revisionist was absconding or deliberately evading execution of the warrants. The subsequent issuance of proclamation under section 82 Cr.P.C., attachment under section 83 Cr.P.C. and the order declaring the revisionist an absconder, therefore, appear to have been passed without the foundational materials required by law. The order-sheets further reveal that successive coercive processes were issued mechanically without receiving the execution reports of the earlier processes. Such a course is contrary to the settled principles governing the issuance of coercive processes against an accused person.

In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the impugned order declaring the revisionists absconder and issuing permanent warrant against them suffers from material irregularity and illegality. The same cannot be sustained in the eye of law. Accordingly the revision petition is allowed. The impugned order declaring the revisionists absconder/proclaimed offender and the consequential permanent warrant issued against them are hereby set aside. The matter is remitted to the Ld. Court below to proceed afresh in accordance with law after ensuring compliance with the statutory requirements relating to service and execution of processes. The revision file be consigned to the record room.

(Dictated and Corrected)

(Shiv Kumar)

Dist.& Addl. Sess. Judge, Biraul

27.05.2026

The order has been corrected, pronounced, signed and dated by me in the open court.

(Shiv Kumar)

Dist.& Addl. Sess. Judge

Biraul

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