

GAHC010003172024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./16/2024

NILOTPAL CHOUDHURY
S/O SRI SUNANDA KR. CHOUDHURY
R/O HARLI BAGAN
C/O MS. MANJU LAPANG
NEAR BEETHANI PHE,
BARNIHAT MEGHALAYA.

VERSUS

SANKAR KALITA
S/O SRI MONORANJAN KALITA
CITY TENT HOUSE, HATIGARH CHARIALI, ZOO NARAGI ROAD, P.O. ZOO
ROAD, P.S. GEETANAGAR, GUWAHATI-24, ASSAM

Advocate for the Petitioner : MR. N NATH

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 10.01.2024

Heard Mr. N. Nath, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

This application filed under Section 482 of the Code of Criminal Procedure, 1973 has been preferred by the petitioner, namely, Nilotpal Choudhury, praying for quashing the orders dated 22.06.2022, 08.03.2019 and 15.12.2021 passed by the Court of learned Judicial Magistrate First Class No.4, Kamrup (Metro) in Complaint Case No. 1432/2018, whereby initially the order for proclaiming the petitioner as absconder and thereafter orders for attachment of his property were issued and thereafter, non-bailable warrant was issued against the present petitioner.

Learned counsel for the petitioner has submitted that the C.R. Case No. 1432/2018 has been preferred by the respondent against the petitioner under Section 138 of the Negotiable Instrument Act, 1881 about which the present petitioner was not aware.

It is submitted by learned counsel for the petitioner that initially summons were issued to the present petitioner, however, the same were not served and thereafter, warrant of arrest was issued against the present petitioner.

It is submitted by learned counsel for the petitioner that by order dated 08.03.2019 which is also impugned in this criminal petition, the warrant of arrest issued against the present petitioner was returned to the Court with a report that the present petitioner is not traceable in the address given in the

warrant, however, the Trial Court only on the basis of the submission made by learned counsel for the respondent/complainant of the case to the effect that the present petitioner is still available in the given address presumed that the present petitioner is concealing himself and is avoiding the process of the Court and issued proclamation as well as fresh warrant of arrest.

Learned counsel for the petitioner has submitted that mandate of Section 82 of Code of Criminal Procedure, 1973 has not been followed by the Trial Court by issuing proclamation order against the present petitioner as before issuing such order, the Court must have a reason to believe that any person against whom a warrant has been issued by it has been absconding or concealing himself so that such warrant cannot be executed, however, in the instant case, there was no material on record to arrive at such a satisfaction by the Trial Court.

Learned counsel for the petitioner has also submitted that merely on the basis of submissions made by the learned counsel for the complainant, orders for proclamation were issued against the present petitioner when there was no material before the Court to arrive at satisfaction that sufficient cause exist for believing that the present petitioner has absconded or was concealing himself to evade from the processes of the Court.

Learned counsel for the petitioner has also submitted that even while the orders were issued for attachment of property, the mandate of Section 83 of Code of Criminal Procedure, 1973 was not followed in the instant case.

It appears from the record that in the proclamation order issued by the Court by order dated 06.04.2022 the date for appearance was fixed on 22.06.2022 whereas from the report of the process server, it is not clear as to on which date the said proclamation was published so as to verify whether 30

days notice as mandated by law, was given to the present petitioner or not.

Issue notice to the respondent.

The petitioner shall take steps for service of notices to the respondent by registered post with A/D within three days from the date of receipt of this order, returnable within three weeks.

In the meanwhile, as it appears from the record that there has been a violation of Section 82 as well as Section 83 of the Code of Criminal Procedure, 1973 while issuing the order of proclamation and attachment against the present petitioner, hence, the operation of the non-bailable warrant of arrest as well as the proclamation and attachment order issued against the present petitioner shall remain in abeyance for the next 30 days from the date of this order and the petitioner is directed to appear before the Trial Court within fifteen (15) days from the date of this order.

The petitioner may make a prayer for appropriate relief before the Trial Court on his appearance before the said court.

Let this matter be listed after three weeks.

JUDGE

Comparing Assistant