

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.365 of 2023

Dinesh Sharaf, S/o Bishwanath Saraff, aged about 42 years, residents
of 493/C/A, G.T. Road, Vibek Bihar, Phase-1, Block-D, P.O. & P.S.-
Shivpur, District-Howrah, West Bengal.

... Petitioner

Versus

1. The State of Jharkhand
2. Krishna Kumar Singh S/o Late Ravindra Prasad, residents of
Village-Narsanda, P.O. & P.S.-Muffasil, Chaibasa, District-West
Singhbhum.

... Opposite Parties

For the Petitioner : Mr. Jitesh Kumar, Advocate
For the State : Mr. Manoj Kr. Mishra, Addl.P.P.
For the OP 2 : Mr. Madhav Prasad, Advocate
: Mr. Manoj Kr. Choubey, Advocate

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 the prayer to quash the entire criminal proceeding including the orders by which the proclamation under Section 82 of Cr.P.C. and attachment order of property under Section 83 of Cr.P.C. has been issued against the petitioner vide order dated 26.02.2013 and 03.04.2013 respectively. It is next submitted that inadvertently in Para-1 and page-16 in third line, the date 14.12.2018 has inadvertently been

written. At the outset, the learned counsel for the petitioner submits that the petitioner confines his prayer only to quash the order dated 26.02.2013 passed by learned A.C.J.M, Ghatsila in connection with Ghatsila P.S. Case No.122 of 2011 corresponding to G.R. Case No.494 of 2011 registered for the offences under Sections 406, 420, 120(B), 379, 468 & 471 of the Indian Penal Code by which the proclamation under Section 82 of Cr.P.C. has been issued against the petitioner and do not press the other prayer; accordingly, the other prayer is rejected as not pressed.

3. So far as the order dated 26.02.2013 is concerned, on 26.02.2013, the IO of the case submitted requisition along with the execution report of the warrant of arrest issued against the petitioner who is the accused person of the case and made a prayer for issuance of proclamation under Section 82 of Cr.P.C. The learned ACJM, Ghatsila without recording any satisfaction that the petitioner is absconding or concealing himself to evade his arrest issued the said proclamation.

4. Learned counsel for the petitioner submits that the proclamation under Section 82 of Cr.P.C. has been issued vide order dated 26.02.2013 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 that too without fixing any time and place for appearance of the petitioner, who is the accused person of the said case. Hence, it is submitted that the order dated 26.02.2013 passed by learned A.C.J.M, Ghatsila in connection with Ghatsila P.S. Case No.122 of 2011

corresponding to G.R. Case No.494 of 2011 being not sustainable in law is liable to be quashed and set aside.

5. Learned Addl.P.P. appearing for the State and the learned counsel for the opposite party no.2 vehemently oppose the prayer and submits that it is evident from the order dated 08.05.2019, the Execution Report of the process under Section 83 of Cr.P.C. has been attached with the case diary and permanent warrant of arrest has also been issued against the petitioner, hence, at this belated stage, the order dated 26.02.2013 passed by learned A.C.J.M, Ghatsila in connection with Ghatsila P.S. Case No.122 of 2011 corresponding to G.R. Case No.494 of 2011 registered for the offences under Sections 406, 420, 120(B), 379, 468 & 471 of the Indian Penal Code, ought not be quashed.

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 A.C.J.M, Ghatsila 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 A.C.J.M, Ghatsila 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 and this is a fit case where the order dated 26.02.2013 passed by learned A.C.J.M, Ghatsila in connection with Ghatsila P.S. Case No.122 of 2011 corresponding to G.R. Case No.494 of 2011 registered for the offences under Sections 406, 420, 120(B), 379, 468 & 471 of the Indian Penal Code, be quashed and set aside *qua* the petitioner only.

7. Accordingly, the order dated 26.02.2013 passed by learned A.C.J.M, Ghatsila in connection with Ghatsila P.S. Case No.122 of 2011 corresponding to G.R. Case No.494 of 2011 registered for the offences under Sections 406, 420, 120(B), 379, 468 & 471 of the Indian Penal Code, is quashed and set aside *qua* the petitioner only.

8. The learned Additional Chief Judicial Magistrate, Ghatsila may pass a fresh order in accordance with law.

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

(Anil Kumar Choudhary, J.)