

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.2859 of 2023**

Jamsed Sk. @ Jamshed Sk., aged about 28 years, son of Nausad Sk.,
Resident of Jainagar, P.O.-Harnagar, P.S.-Nakashipara, Dist.-Nadia,
West Bengal.

... Petitioner

Versus

1. The State of Jharkhand
2. Selim Shekh, son of Raysuddin Shekh, resident of Rahmatpur,
Bagan, P.O.-Nabingar, P.S.-Pakur (M), Dist.-Pakur (Jharkhand).

... Opposite Parties

For the Petitioner : Md. Asadul Haque, Advocate
: Mr. Faruque Ansari, Advocate
For the State : Ms. Amrita Kumari, Addl.P.P.
For the OP 2 : Mr. Santosh Kr. Jha, 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 a prayer to quash the orders dated 15.05.2018, 20.08.2018 and 11.05.2023 passed by the learned Sub-Divisional Judicial Magistrate, Pakur in connection with P.C.R. Case No.267 of 2017 registered for the offences punishable under Section 138 of the Negotiable Instruments Act whereby and whereunder the learned Sub-Divisional Judicial Magistrate, Pakur has issued proclamation under Section 82 and 83 of the Code of

Criminal Procedure and permanent warrant of arrest against the petitioner respectively.

3. At the outset, learned counsel for the petitioner submits that the petitioner does not press the prayer to quash the order dated 20.08.2018 as no property of the petitioner has been attached as yet and confines his prayer only to quash orders dated 15.05.2018 and 11.05.2023 passed by the learned Sub-Divisional Judicial Magistrate, Pakur in connection with P.C.R. Case No.267 of 2017 registered for the offences punishable under Section 138 of the Negotiable Instruments Act.

4. Accordingly, the prayer to quash order dated 20.08.2018 passed by the learned Sub-Divisional Judicial Magistrate, Pakur in connection with P.C.R. Case No.267 of 2017 registered for the offences punishable under Section 138 of the Negotiable Instruments Act is rejected as not pressed.

5. The brief facts of the case is that consequent upon the petitioner-who is the accused person of the P.C.R. Case No.267 of 2017 not appearing before the trial Court vide order dated 15.05.2018, the trial Court issued the proclamation under Section 82 of Cr.P.C. and even though the execution report of the attachment order of the property issued under Section 83 of the Cr.P.C. was not returned as well vide order dated 11.05.2023 in the said P.C.R. Case No.267 of 2017, the learned Sub-Divisional Judicial Magistrate, Pakur declared the petitioner to be absconder and also issued permanent warrant of arrest against the petitioner.

6. Learned counsel for the petitioner submits that the proclamation under Section 82 of Cr.P.C. has been issued vide order dated 15.05.2018 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. that too without mentioning any time and place for appearance of the petitioner. Hence, it is submitted that the said order dated 15.05.2018 being not in accordance with law be quashed and set aside. It is then submitted by the learned counsel for the petitioner that the learned Sub-Divisional Judicial Magistrate, Pakur vide its order dated 11.05.2023 has committed an illegality as the condition precedent for declaring a person absconder and issuing permanent warrant of arrest is that, it must be proved before the court concerned, that the accused has absconded and there is no immediate prospect of arresting him but in this case, there being no material in the record to suggest that there is no immediate prospect for arresting the petitioner as the execution report of neither the non-bailable warrant of arrest nor the proclamation under Section 82 of Cr.P.C. nor the attachment order passed under Section 83 of the Cr.P.C. has been received, the learned Sub-Divisional Judicial Magistrate, Pakur committed a grave illegality in declaring the petitioner as absconder and issued permanent warrant of arrest. Hence, it is submitted that the order dated 11.05.2023 being not sustainable in law, the same be also quashed and set aside.

7. The learned Addl. P.P. and the learned counsel for the opposite party no.2 on the other hand opposes the prayer and submits that the very fact that the learned Sub-Divisional Judicial Magistrate, Pakur has issued the proclamation under Section 82 of Cr.P.C., and passed the order declaring the petitioner to be an absconder itself shows that there were materials available in the record for the learned Sub-Divisional Judicial Magistrate, Pakur to be satisfied that there is justification for issuance of such proclamation and declaring the petitioner who is the accused person of the case concerned to be an absconder. Hence, it is submitted that this criminal miscellaneous petition being without any merit, be dismissed.

8. 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 Sub-Divisional Judicial Magistrate, Pakur 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 Sub-Divisional Judicial Magistrate, Pakur has committed gross 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 15.05.2018 passed by the learned Sub-Divisional Judicial Magistrate, Pakur in connection with P.C.R. Case No.267 of 2017 is quashed and set aside.

9. So far as the order dated 11.05.2023 is concerned, it is a settled principle of law that before exercising the power under Section 299 of the Code of Criminal Procedure, it is necessary that all conditions prescribed must be strictly complied with namely the court must be satisfied that the accused has absconded or that there is no immediate prospect of arresting him, as has been held by the Hon'ble Supreme Court of India in the case of **Nirmal Singh vs. State of Haryana**, reported in (2000) 4 SCC 41.

10. Now coming to the facts of the case, the perusal of the record reveals that there is absolutely no material in the record to suggest that the petitioner has absconded or that there is no immediate prospect of arresting him. Admittedly, the execution report of the non-bailable warrant of arrest or the proclamation under section 82 of the Cr.P.C. or for that matter the execution report of the warrant of attachment of property of the petitioner has not been returned to the court concerned. In the absence of the same, certainly, the learned Sub-Divisional Judicial Magistrate, Pakur has committed a grave illegality by still declaring the

petitioner to be an absconder and issuing permanent warrant of arrest. Hence, this Court is of the considered view that the order dated 11.05.2023 passed by the learned Sub-Divisional Judicial Magistrate, Pakur in connection with P.C.R. Case No.267 of 2017 being not sustainable in law be quashed and set aside *qua* the petitioner only.

11. Accordingly, the orders dated 15.05.2018 and 11.05.2023 passed by the learned Sub-Divisional Judicial Magistrate, Pakur in connection with P.C.R. Case No.267 of 2017, is quashed and set aside *qua* the petitioner only.

12. The learned Sub-Divisional Judicial Magistrate, Pakur or its successor Court may pass a fresh order in accordance with law.

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

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 27th of November, 2025
AFR/ Abhiraj

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