

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. M. P. No. 4743 of 2022

Maidnab Mahato @ Maidanab Mahato, aged about 54 years, son of late Manik Chandra Mahato, resident of 17, Saharbera, PO - Chainpur, PS - Chainpur, District - Seraikella - Kharsawan.

... **Petitioner**

Versus

1. The State of Jharkhand.
2. Smt. B. Bharti Devi, wife of late Kameshwar Rao, resident of Qr. No. H / 1, Nirmal Nagar, Hume Pipe Road, PO & PS - Sitaramdera, Town Jamshedpur, District - Singhbhum East.

... **Opposite Parties**

For the Petitioner : Mrs. Jasvindar Mazumdar, Advocate
For the Opp. P. No.2 : None
For the State : Mr. Ruby Pandey, Addl. P.P.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. Though notice has already been served upon the Opp. Party No. 2, yet no one turns up on behalf of the Opp. Party No. 2 in spite of repeated calls.
3. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 with several prayers.
4. Learned counsel for the petitioner at the very outset submits that the petitioner does not press the prayer to quash the orders dated 11.12.2012 and 07.05.2013 whereby and whereunder the non-bailable warrant of arrest and the attachment order of the property under Section 83 of the Cr.P.C. which has not yet been

executed, respectively were issued by the Judicial Magistrate 1st Class, Jamshedpur in connection with C/1 Case No. 1192 of 2010.

5. Accordingly, the prayer to quash the orders dated 11.12.2012 and 07.05.2013 are rejected as not pressed.
6. It is next submitted that the petitioner confines his prayer for quashing the orders dated 22.03.2013 and 13.08.2013 passed by the Judicial Magistrate 1st Class, Jamshedpur in connection with C/1 Case No. 1192 of 2010.
7. So far as the order dated 22.03.2013 passed in the said case is concerned, it is submitted by the learned counsel for the petitioner that by the said order dated 22.03.2013, proclamation under Section 82 of the Cr.P.C. has been issued without following the due of 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 the Cr.P.C. that too without mentioning any time and place for appearance of the accused person of the case concerned, who is the petitioner herein. Hence, it is submitted that the said order dated 22.03.2013 being not in accordance with law, be quashed and set aside.
8. So far as the order dated 13.08.2013 passed in the said case is concerned, it is next submitted by the learned counsel for the petitioner that the condition precedent for declaring a person absconder and issue of permanent warrant, 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 on record to suggest that there is no immediate prospect of arresting the petitioner, but still as the learned Judicial Magistrate 1st Class, Jamshedpur has ordered for issuance of permanent warrant of arrest therefore it has committed a grave illegality in declaring him an absconder and issuing permanent warrant of arrest. Hence, it is submitted that the order dated 13.08.2013 being not sustainable in law, be quashed and set aside.

9. The learned Additional P.P. on the other hand opposes the prayer of the petitioner to quash the orders dated 22.03.2013 and 13.08.2013 submits that the fact that, the learned Judicial Magistrate, Jamshedpur has issued the proclamation under Section 82 of the Cr.P.C. and declared the petitioner to be an absconder and directed issue of permanent warrant of arrest against him, itself goes to show that there were sufficient materials on record for passing such orders. Hence, it is submitted that the Cr.M.P. being without any merit, be dismissed.
10. Having heard the rival submissions made at the bar and after going through the materials on record, it is pertinent to mention here that it is a settled principle of law that the Court which issues the proclamation under Section 82 of the Cr.P.C. must record its satisfaction that the accused, in respect of whom the proclamation under Section 82 of the Cr.P.C. is made, is absconding or concealing himself to evade his arrest. In case, the Court decides to issue the proclamation under Section 82 of the 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 the Cr.P.C. is issued.
11. The perusal of the record reveals that the learned Judicial Magistrate has neither recorded the satisfaction that the petitioner is absconding or concealing himself to evade his arrest nor fixed any time or place for appearance of the petitioner. Hence, this Court has no hesitation in holding that the learned Judicial Magistrate 1st Class, Jamshedpur, has committed gross illegality by issuing the said proclamation order under Section 82 of the Cr.P.C. without complying with the mandatory requirement of law.
12. Hence, the same is not sustainable in law and continuation of the same will amount to an abuse of law. Therefore, this is a fit case where the order dated 22.03.2013 passed in C/1 Case No. 1192 of 2010 is liable to be quashed and set aside.

- 13.** So far as the order dated 13.08.2013 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 and there is no immediate prospect of arresting him; as has been held by the Hon'ble Supreme Court in the case of *Nirmal Singh Vs. State of Haryana* reported in **2000 4 SCC 41**. 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 and that there was no immediate prospect of arresting him. In the absence of that certainly the learned Judicial Magistrate 1st Class, Jamshedpur has committed grave illegality by declaring the petitioner who is the accused person in C/1 Case No. 1192 of 2010 to be an absconder and issuing permanent warrant of arrest against him. Hence, this Court is of the considered view that the order dated 13.08.2013 passed by the learned Judicial Magistrate 1st Class, Jamshedpur in C/1 Case No. 1192 of 2010 being not sustainable in law, be quashed and set aside.
- 14.** Accordingly, the order dated 22.03.2013 and 13.08.2013 passed by the learned Judicial Magistrate 1st Class, Jamshedpur in connection with C/1 Case No. 1192 of 2010, is quashed and set aside.
- 15.** The learned Judicial Magistrate 1st Class, Jamshedpur or its successor Court may pass a fresh order in accordance with law.
- 16.** This Criminal Miscellaneous Petitioner stands *disposed off* to the aforesaid extent only.

(Anil Kumar Choudhary, J.)