

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1649 of 2024

Abhishek Kumar,

....

Petitioner

Versus

The State of Jharkhand

....

Opp. Party

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

.....

For the Petitioner
For the State

: Mr. Devesh Ajmani, Advocate
: Mr. Satish Prasad, Addl. P.P.

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By the Court:-

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with a prayer to quash the order dated 03.05.2024 passed by the learned Judicial Magistrate 1st Class, Jamshedpur in connection with Mango Olidih P.S. Case No.53 of 2024 involving the offence punishable under Section 376 (2) (n) of the Indian Penal Code by which the learned Judicial Magistrate 1st Class, Jamshedpur has issued the proclamation under Section 82 Cr.P.C. against the petitioner and also to quash the order dated 28.03.2024 passed by the said learned Judicial Magistrate 1st Class, Jamshedpur by which the learned Judicial Magistrate 1st Class, Jamshedpur has directed for issue of

warrant of arrest against the petitioner- who is the accused person of the said case.

3. The brief fact of the case is that on 28.03.2024 a petition was filed by the I.O. praying for issue of warrant of arrest against the petitioner. The learned Judicial Magistrate 1st Class, Jamshedpur on perusal of the record allowed the prayer. On 03.05.2024 the learned Judicial Magistrate 1st Class, Jamshedpur took up the application filed by the I.O. of the case for issuance of the proclamation under Section 82 Cr.P.C. The learned Judicial Magistrate 1st Class, Jamshedpur observed that A.B.P. No. 275 of 2024 has been rejected by the Additional Sessions Judge-IV hence, the same means that the accused is deliberately absconding and not taking any proper legal steps and issued the proclamation without fixing any time and place for appearance of the accused.
4. It is submitted by the learned counsel for the petitioner that the learned Judicial Magistrate 1st Class, Jamshedpur in a mechanical manner has issued the non-bailable warrant of arrest against the petitioner without recording any satisfaction that the petitioner is evading his arrest. It is next submitted by the learned counsel for the petitioner that the proclamation under Section 82 of Cr.P.C. has been issued vide order dated 03.05.2024 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. . It is further submitted that the said order is an illegal one is the proclamation has been ordered without fixing any time or place

for the appearance of the petitioner. Hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.

5. Learned Additional Public Prosecutor on the other hand opposes the prayer for quashing the orders dated 28.03.2024 and 03.05.2024 passed by the learned Judicial Magistrate 1st Class, Jamshedpur in Mango Olidih P.S. Case No.53 of 2024 and submits that the very fact that the learned Magistrate has issued the proclamation under Section 82 of Cr.P.C. and non-bailable warrant of arrest itself shows that there were materials available in the record for the learned Magistrate to be satisfied that there is justification for issuance of such proclamation and non-bailable warrant of arrest. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.
6. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that Section 73 of the Code of Criminal Procedure vests the power *inter alia* upon the Magistrate of the First Class to direct warrant to any person within the local jurisdiction for arrest of *inter alia* any person who is the accused of non-bailable and evading his arrest.
7. Now coming to the order dated 28.03.2024 though it has not been specifically mentioned in the said order itself about the petitioner being accused of having committed any non-bailable offence but perusal of the record reveals that the petitioner is involved in commission of the offence punishable *inter alia* under Section 376 of Indian Penal Code which is a non-bailable offence but there is no observation by the learned Judicial Magistrate 1st Class, Jamshedpur that the petitioner is evading arrest and as there is no material in the

record to suggest that the learned Judicial Magistrate 1st Class, Jamshedpur was satisfied that the petitioner was evading his arrest, the order dated 28.03.2024 without any observation or satisfaction by the Magistrate that the petitioner is evading his arrest, but still issuing the warrant of arrest, apparently the relevant order sheet having been written by someone else and the Judicial Magistrate concerned has just put his signature mechanically without application of mind, is not sustainable in law. Accordingly, the said order dated 28.03.2024 is quashed and set aside.

8. So far as the order dated 03.05.2024 is concerned, 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 Judicial Magistrate 1st Class, Jamshedpur has not fixed any time or place for appearance of the petitioner who is the accused person of this case, this Court has no hesitation in holding that the learned Judicial Magistrate 1st Class, Jamshedpur 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. Therefore, this is a fit case where the order dated

03.05.2024 passed by the learned Judicial Magistrate 1st Class, Jamshedpur in Mango Olidih P.S. Case No.53 of 2024 be quashed and set aside.

9. Accordingly, the order dated 03.05.2024 passed by the learned Judicial Magistrate 1st Class, Jamshedpur in Mango Olidih P.S. Case No.53 of 2024, is quashed and set aside.
10. The learned Magistrate may pass a fresh order in accordance with law.
11. The Registrar General of this Court is directed to send a copy of this Order to the Principal District Judge, Jamshedpur with a direction to impress upon the Judicial Magistrate concerned, not to pass orders in such reckless manner, without application of mind and unnecessarily enhance the burden upon this Court and if necessary recommend the training of the judicial officer concerned on the Sundays and Holidays in Judicial Academy, Jharkhand, in online mode.
12. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 19th June, 2024
AFR/Sonu-Gunjan/-