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IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1422 of 2024

Vishal Kumar, aged about 41 years, son of Sri Muchkund Prasad, resident of Near Jamua Police Station, P.O. & P.S.-Jamua, Dist.-Giridih, and presently resident of Old A.G. Cooperative Colony, Kadru, P.O.-Doranda, P.S.-Argora, Dist.-Ranchi

.... Petitioner

Versus

1. The State of Jharkhand
2. Ravi Kumar, son of Sri Shivcharan Ram, having address as Jharkhand High Court, P.O. & P.S.-Doranda, Dist.-Ranchi, presently resident of Sector-2, Side-5 Market, Near B.S.P. High School, Shivshankar Nagar, P.O. & P.S.-Dhurwa, Dist.-Ranchi

…. Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

…..

For the Petitioner : Mr. Rohit Ranjan Sinha, Advocate
For the State : Mr. P.D. Agrawal, Spl. P.P.
For the O.P. No.2 : Mr. Akchansh Kishore, Advocate

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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 of the Code of Criminal Procedure with a prayer to quash the entire criminal proceeding with all consequential orders including the order taking cognizance dated 15.02.2011 by which the learned Magistrate has taken cognizance for the offences punishable under Section 341 and

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323 of Indian Penal Code, as well as the orders dated 30.06.2012/06.09.2012, 20.11.2013, 13.01.2015, 12.01.2017 and 12.09.2017 in connection with Doranda P.S. Case No.09 of 2011, corresponding to G.R. No. 59 of 2011 whereby and where under, the learned Magistrates have respectively issued the bailable warrant of arrest, non-bailable warrant of arrest, proclamation under Section 82 Cr.P.C., order for attachment of the property of the petitioner under Section 83 Cr.P.C. and the order by which the petitioner has been declared absconder and permanent warrant of arrest has been issued under Section 299 Cr.P.C.

3. The brief fact of the case is that the petitioner is the accused of the said case. The petitioner was on bail during the investigation of the case. Charge sheet was submitted. After submission of charge sheet, summons was issued to the petitioner but without service report of the summons being received or without summons ever being served upon the petitioner vide order dated 30.06.2012/06.09.2012 bailable warrant of arrest was issued against the petitioner. On 20.11.2013 though the execution report of the bailable warrant of arrest was not received, the learned Magistrate ordered for issue of non-bailable warrant of arrest against the petitioner. On 13.01.2015 though the execution report of the non-bailable warrant of arrest was not received, still, the learned Magistrate directed to issue the proclamation under Section 82 Cr.P.C. On 12.01.2017 without any material to suggest that the proclamation under Section 82 Cr.P.C. was ever made, the learned Magistrate ordered for attachment of the property of the petitioner

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and thereafter on 12.09.2017 the petitioner was declared absconder and permanent warrant of arrest was ordered to be issued against him.

4. It is submitted by the learned counsel for the petitioner that since the learned Magistrate directed for issue of the summons, it ought not have issued the bailable warrant of arrest vide order dated 30.06.2012/06.09.2012 without the service of the summons issued to the petitioner being served upon him or the service report of such summons was received by the court concerned and similarly, the learned Magistrate ought not have issued the non-bailable warrant of arrest, proclamation under Section 82 Cr.P.C. and the attachment order of the property under Section 83 Cr.P.C. without any material in the record to show that the respective processes has ever been executed. It is next submitted by the learned counsel for the petitioner that so far as the order dated 12.09.2017 is concerned, 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 of arresting the petitioner, the learned Magistrate committed a grave illegality in declaring the petitioner absconder and issued permanent warrant of arrest. Hence, it is submitted that all the impugned orders being not sustainable in law, the same be quashed and set aside and as the compromise has been effected to between the parties, the entire criminal proceeding be also quashed and set aside.

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5. The learned Spl. P.P. on the other hand opposes the prayer to quash the orders dated 30.06.2012/06.09.2012, 20.11.2013, 13.01.2015, 12.01.2017 and 12.09.2017 in connection with Doranda P.S. Case No.09 of 2011, corresponding to G.R. No. 59 of 2011 and submits that the very fact that the learned Magistrate has issued the bailable warrant of arrest, non-bailable warrant of arrest, proclamation under Section 82 of Cr.P.C., the order of attachment under Section 83 of Cr.P.C. and the order declaring the petitioner to be an absconder 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 bailable warrant of arrest, non-bailable warrant of arrest, proclamation under Section 82 Cr.P.C., passing order for attachment 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.

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 so far as the order dated 30.06.2012/06.09.2012 is concerned, it is evident from the record that service report of the summon issued to the petitioner, who was on bail during the investigation of the case, has not been received so in the absence of any material to suggest that summons which was issued by the learned Magistrate concerned, itself having not been served certainly, the learned Magistrate committed a grave illegality by issuing the bailable warrant of arrest.

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7. Similarly, so far as the order dated 20.11.2013 is concerned, perusal of the record reveals that though bailable warrant of arrest was issued against the petitioner but without the execution report of such bailable warrant of arrest, the learned Magistrate has issued non-bailable warrant of arrest which is also not sustainable in law because it is a settled principle of law that the learned Magistrate having once issued the bailable warrant of arrest, ought to have ensured that the execution report of such bailable warrant of arrest is received, before taking any further coercive action, like to issue non-bailable warrant of arrest. Hence, the said order dated 20.11.2013 is also not sustainable in law.

8. So far as the order dated 13.01.2015 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 Magistrate 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 Magistrate has committed gross illegality by issuing the said proclamation under Section 82 of Cr.P.C. without complying the

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mandatory requirements of law. Hence, the order dated 13.01.2015 is also not sustainable in law.

9. So far as the order dated 12.01.2017 is concerned, it is a settled principle of law that the court issuing the proclamation under Section 82 of Cr.P.C. may for reasons to be recorded in writing at any time after the issue of proclamation, order for attachment of any property movable or immovable or both belonging to the proclaimed person. Now, in the absence of any material in the record to suggest that the proclamation under Section 82 of Cr.P.C. was in fact made in accordance with law, certainly the learned Magistrate committed illegality by passing the order of attachment of property of the petitioner without mentioning the description of the property to be attached and without recording any reason in writing about the need for passing such order of attachment. Hence, the said order dated 12.01.2017 is also not in accordance with law and the same is liable to be set aside.

10. So far as the order dated 12.09.2017 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**.

11. 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

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that the petitioner has absconded or that there is no immediate prospect of arresting him. In the absence of that, certainly the learned Judicial Magistrate, Ranchi has committed a grave illegality by 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 12.09.2017 passed by the learned Judicial Magistrate, Ranchi in connection with Doranda P.S. Case No.09 of 2011, corresponding to G.R. No. 59 of 2011 is also not in accordance with law.

12. As already indicated above, since the orders dated 30.06.2012/06.09.2012, 20.11.2013, 13.01.2015, 12.01.2017 and 12.09.2017 passed by concerned Magistrate in connection with Doranda P.S. Case No.09 of 2011, corresponding to G.R. No. 59 of 2011 are not sustainable in law, certainly continuation of the same will amount to abuse of process of law and hence, this is a fit case where the orders dated 30.06.2012/06.09.2012, 20.11.2013, 13.01.2015, 12.01.2017 and 12.09.2017 passed by the concerned Magistrate in connection with Doranda P.S. Case No.09 of 2011, corresponding to G.R. No. 59 of 2011 be quashed and set aside.

13. Accordingly, the orders dated 30.06.2012/06.09.2012, 20.11.2013, 13.01.2015, 12.01.2017 and 12.09.2017 passed by the learned concerned Magistrate in connection with Doranda P.S. Case No.09 of 2011, corresponding to G.R. No. 59 of 2011 is quashed and set aside.

14. The concerned Magistrate, may pass any fresh order in accordance with law.

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15. So far as the prayer of the petitioner for quashing the entire criminal proceeding on the ground that compromise has been effected to between the parties is concerned, it is pertinent to mention here that the only offences involved in this case is punishable under Section 341 and 323 of Indian Penal Code. Both the offences are compoundable in nature and in case there has been a compromise between the parties, the parties are free to approach the court concerned by filing an appropriate application for compounding of the offences but since there is a specific provision for compounding of the offences involved in this case, this Court is not inclined to exercise the power under Section 482 Cr.P.C. in such a matter.

16. Accordingly, the prayer for quashing the entire criminal proceeding on the ground of compromise being not maintainable in view of the fact that both the offences are compoundable in nature. Accordingly, the prayer for quashing the entire criminal proceeding is rejected.

17. In the result, this criminal miscellaneous petition is allowed to the aforesaid extent only.

18. In view of disposal of the criminal miscellaneous petition, interlocutory application, if any, stands disposed of being infructuous.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 15th May, 2024
AFR/Sonu-Gunjan/-