

Court No. - 92

Case :- APPLICATION U/S 482 No. - 37802 of 2023

Applicant :- Rajesh Kumar Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Kailash Nath

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Kailash Nath, learned counsel for the applicant and Sri Kamlesh Kumar Tripathi, the learned AGA appearing for the State.

2. On 12.10.2023, this Court passed the following order:

"1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. The present 482 Cr.P.C. application has been filed to quash the N.B.W. order and proceeding of section 82 Cr.P.C. dated 21.08.2023 passed by C.J.M., Mau in Case No. 1004 of 2020 (State Vs. M.D. Rajesh Kumar Singh), arising out of Case Crime No. 674 of 2017, under Sections- 419, 420, 406 I.P.C., Police Station- Kotwali Mau, District- Mau.

3. Apart from many other grounds, learned counsel for the applicant submitted that as per order sheet dated 21.08.2023/02.09.2023, it is apparently clear that Presiding Officer was on leave, but even though, order of N.B.W. and proceeding of section 82 Cr.P.C. has been issued. He also submitted that prior to that order, applicant was in jail and only absent from the Court proceeding on one occasion, upon which, without issuing bailable warrant, N.B.W. order and proceeding of 82 Cr.P.C. may not be issued.

4. I have perused the order sheet dated 21.08.2023/02.09.2023. From the perusal of same, it is apparently clear that Presiding Officer was on leave. Once, it is written in the order sheet, how N.B.W. and order for proceeding under Section 82 Cr.P.C. can be passed.

5. Therefore, under such facts of the case, District Judge, Mau is directed to submit report about the matter within 15 days from today.

6. Put up this case on 27.10.2023 as fresh.

7. Till then, no coercive action shall be taken against applicant.

8. Registrar (Compliance) is directed to send a copy of this order to District Judge, Mau forthwith for necessary compliance."

3. In terms of the aforesaid order, the District and Sessions Judge, Mau has submitted the following report:

"With reference to Hon'ble Court's Letter No. RC/5222(Crl.) Dated:October 17,

2023 in the matter of above subject, it is submitted that in compliance of the order of Hon'ble Court, I obtained comments from the Chief Judicial Magistrate, Mau, in which he has stated that on 21.08.2023, he was on leave and on this date, petitioner/accused Rajesh Kumar Singh was absent, so against the petitioner/accused Rajesh Kumar Singh along other absented co-accused persons. Non-Bailable-Warrant and process under Section 82 of the Code of Criminal Procedure were directed to be issued, but order sheet of dated 21.08.2023 does not bear signature of the Presiding Officer, but as the Presiding Officer was on leave, above processes were not issued by the office. On 02.09.2023, the Presiding Officer was present and petitioner/accused Rajesh Kumar Singh and other co-accused persons were absent, so against petitioner/accused Rajesh Kumar Singh and other absented accused persons namely Ashish Srivastava, Durgesh Jaiswal, Pawan Sharma, Smt. Priyanka Singh and Deepak Shukla, Non-Bailable-Warrant and process under Section 82 of the Code of Criminal Procedure were directed to be issued, as from previous orders, above processes were being issued against them and the order sheet bears his signature. The learned Chief Judicial Magistrate, Mau tendered unconditional apology, stating that from the previous order sheets, above processes were issued, so on 21.08.2023 in his absence, above processes were written to be issued by the office, but above processes were not issued. He also assured to be vigilant in future for such error. The report submitted by the officer is enclosed herewith for kind perusal.

I have also summoned the file from the office of the Chief Judicial Magistrate, Mau and perused the same. On 21.08.2023 the Presiding Officer was on leave, but due to slip/mistake by the office, Non-Bailable-Warrant and process under Section 82 of the Code of Criminal Procedure were directed to be issued by the office, but above processes were not issued by the office. The learned Chief Judicial Magistrate, Mau tendered unconditional apology and assured that such error shall not be committed in future. However, the learned Chief Judicial Magistrate, Mau is directed to be vigilant in future for such commitment of error.

It is, therefore, requested that report may kindly be placed before Hon'ble Court for sympathetic consideration."

4. Since as per the report submitted by the District and Sessions Judge, Mau, the order dated 21.08.2023 was neither signed nor passed by the Chief Judicial Magistrate, Mau as he was on leave. Therefore, the said order is hereby quashed as non est.

5. The applicant herein is directed to appear before the Magistrate within a period of two weeks from today. On such appearance of the applicant, no coercive steps shall be taken against the applicant and the matter will be proceeded against the applicant in accordance with law ignoring the order of non-bailable warrants and Section 82 Cr.P.C. issued against the applicant on 21.08.2023, which was an order nor in existence and all the subsequent orders passed, following the said order dated 21.08.2023 and non-presence of the applicant on said dates shall be exempted.

6. With the aforesaid observation, the instant application is **disposed of**.

Order Date :- 27.10.2023

Ashish Pd.