

**IN THE HIGH COURT OF JUDICATURE AT
PATNA
Criminal Miscellaneous No.10889 of 2013**

Arising Out of PS.Case No. -22 Year- 1995 Thana -CHAPRA MUFFASIL District- -
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1. Shyam Narayan Singh, Son of Late Suhawan Singh
Resident of Village- Mehiya, P.S.- Chapra Mufassil, Distt.-
Saran

.... Petitioner.

Versus

1. The State of Bihar

.... Opposite Party.

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Appearance :

For the Petitioner : Mr.

For the Opposite Party/s : Mr. M.Haque(App)

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

3 21-05-2015 Heard learned counsel for the petitioner and
learned counsel for the State.

2. This is a petition for quashing the order dated 09.11.2012 passed in Cr. Revision No. 306 of 2012 by Ad hoc Additional Sessions 5th, Saran, Chapra, by which he has confirmed the order dated 16.06.2012 passed by Sri Anand Kumar Srivastava, Judicial Magistrate, 1st Class, Chapra, in U.T. Case No. 31 of 2012 arising out of Chapra Muffasil P.S. Case No. 22 of 1995 dated 26.01.1995, registered under Section 304 B of Indian Penal Code by which

the petitioner has been declared absconder and permanent warrant of arrest has been issued.

3. The fact of the case in narrow compass the F.I.R. was lodged for offence under Section 304B of Indian Penal Code. During investigation, the petitioner was granted bail on 26.09.1998. However, subsequently, charge sheet was submitted on 31.12.1998 against four accused persons including the petitioner and consequently after submission of charge sheet cognizance was taken.

4. Learned counsel for the petitioner submits that after submission of the charge sheet no notice or process for summon or warrant of arrest has been served or executed on the petitioner and there is neither service report or execution report submitted but the learned Judicial Magistrate by order dated 16.06.2012 declared the petitioner absconder and order to issue permanent warrant of arrest against him without processes issued under Sections 82 and 83 of Cr.P.C. having been effective. The order of learned Magistrate dated 16.06.2012 was challenged



in revision before the District Judge but said revision has been dismissed. However, in revision order while rejecting the revision the finding has been recorded by the Additional Sessions Judge to the effect that from perusal of the record, it appears that court has issued summons against the accused by order dated 20.12.2003 and subsequently non-bailable warrant of arrest issued on 19.02.2004. Thereafter, a reminder was issued on 24.04.2006 for execution of warrant. Thereafter, on 22.07.2008, processes were issued under Section 82 and 83 of Cr.P.C. Again on 27.08.2011, a reminder was sent for execution of process under Section 82 and 83 of Cr.P.C. The order of revisional court further mention that letters were sent to the Superintendent of Police vide letter dated 09.04.2012 for execution of process under Section 82 and 83 of Cr.P.C. and on non-appearance of the petitioner, by impugned order dated 16.06.2012 the petitioner has been declared absconder.

5. Learned Additional Sessions Judge has



further recorded his finding that it is true that process issued for execution of warrant by the police and even process issued under Section 82 and 83 of Cr.P.C. was sent, but the same was not served or executed and has stated in pursuance of the Court's letter no. 952-79 dated 27.01.1983, he has been declared absconder.

6. The learned counsel for the petitioner has challenged the order of revisional court that order is per se improper and illegal as issuance of summon without service report a warrant of arrest has been issued and without execution of warrant of arrest or without any report to the effect about execution of warrant or that accused is absconding the process has been issued under Section 82 and 83 of Cr.P.C. and without any report about the publication of any written proclamation and process under Section 83 of Cr.P.C. was issued and without execution of process under Section 83 of Cr.P.C. the petitioner has been declared absconder which is in violation of the provision contained in Section 82 and 83 of

Cr.P.C. has caused great prejudice and inconvenience to the petitioner.

7. However, going into provision under Section 82 of Cr.P.C., it is relevant to quote;

Proclamation for person absconding

(1) Any court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has been absconded or is concealing himself so that such warrant cannot be executed such Court may publish a written proclamation requiring him to appear at a specific place and as a specified time not less than thirty days from the date of publishing such proclamation.

(2) the proclamation shall be

published as follows—

(i)(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or home-stead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to be effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of Sub Section (2) shall be conclusive evidence that the requirement of this section

have been complied with and that the proclamation was published on such day.

8. However, in the entire order sheet, there is no execution report regarding the warrant of arrest issued against the petitioner nor any report for execution of Section 82 and 83 of Cr.P.C. or there is no report whether the petitioner evading arrest. However, it is relevant to mention that after submission of charge sheet, summon was required to be issued by the court. However, there is no mention that summon was issued by order dated 20.12. 2013. Further, there is no mention whether any report with regard to the summon that summon was duly served. However, without receiving the report regarding service of process, again non-bailable warrant of arrest has been issued. Further, there is no mention that said warrant of arrest ever executed or not or any report that petitioner is evading arrest and even without any such report that petitioner is evading arrest, the process under Sections 82 and 83 of Cr.P.C. issued simultaneously.



However, it has always been deprecated process under Sections 82 and 83 is not required to be issued simultaneously unless situation warrant but from the order of Additional Sessions Judge, it is apparent that process under Sections 82 and 83 of Cr.P.C. has been issued simultaneously. However, process under Section 83 of Cr.P.C. is required to be issued after publication of written proclamation requiring appearance of the person against whom process under Section 82 of Cr.P.C. issued. However, there is no report that any such proclamation was issued or published within thirty days time was granted. However, though, process under Sections 82 and 83 of Cr.P.C. ordered to be issued, but there is no report of such proclamation issued or complied.

Section 83 of Cr.P.C. provides that the Court issuing a proclamation under Section 82 may, for reasons to be recorded in writing, at any time after the



issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person. Provides that whether at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued---(a) is about to dispose of the whole or any part of his property, or (b) is about to remove the whole or any part of his property from the local jurisdiction of the Court. It may order the attachment simultaneously with the issue of the proclamation.

9. However, there is no report that the petitioner is about to dispose off whole property or



any part to issue the process under Sections 82 and 83 of Cr.P.C. issued permanent warrant and declared absconder. Hence neither the Magistrate nor the Revisional court considered whether warrant issued was ever executed and without execution of warrant and process under Sections 82 and 83 Cr.P.C. has been issued and without any report that petitioner is going to dispose his property, the petitioner was declared absconder. Furthermore, it has been stated in order impugned that in pursuance of letter of Hon'ble High Court no. 952-79 dated 27.01.1993 that if accused does not appear for two years then process under sections 82 and 83 of Cr.P.C. is issued does not mean that process be issued in defiance the procedure presented by law under Sections 82 and 83 of Cr.P.C. and as a letter cannot the provision contain in Code of Criminal Procedure.

10. However, learned Additional Sessions Judge, has not referred to the letter, but the general principle that letter cannot override the act and

hence order passed in revision is **set aside and the petition is allowed.** However, at the same time the petitioner is directed to appear before the court below within four weeks from the date of receipt of the order and trial court after his appearance shall proceed in accordance with law.

11. Regard being had to the fact, the case was of the year 1995, the trial court is directed to expedite the trial and conclude the same at the earliest.

m.p.

(Gopal Prasad, J)

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