

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19192 of 2016

Arising Out of PS.Case No. -953 Year- 2006 Thana -SIWAN COMPLAINT CASE District-
SIWAN

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1. Sri Prakash Verma @ Prakash Verma, Son of Sri Kanhaiya Verma,
resident of village- Prakash Bhawan, near I.T.I., P.O. and P.S.-
Dewariya, District- Dewariya (U.P.)

.... Petitioner

Versus

1. The State of Bihar
2. Vijay Kumar Singh, son of Late Sahdeo Singh, resident of village-
Paigamberpur, P.O.- Hussainganj, District- Siwan

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Gajendra Kumar Singh, Advocate.

For the Opposite Party : Mr. Sanjay Kumar Singh (APP)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL ORDER

5 27-07-2016

This Court has noticed, in numerous cases, that in the complaint cases, the concerned Courts taking cognizance, without recording satisfaction of service of summon on the accused persons issue warrant of arrest/processes under Sections 82/83 of the Code of Criminal Procedure, 1973. It has also been experienced that processes under Sections 82/83 of the Code of Criminal Procedure are being issued more mechanically, without verifying whether despite proper steps having been taken for execution of warrant of arrest, the concerned accused persons could not be apprehended. Such practice is blatant breach of mandatory statutory provisions under the Code of Criminal Procedure, 1973.

In the present case, for grant of anticipatory bail, which



arises out of the Complaint Case No. 953 of 2006, registered for the offence punishable under section 420 of the Indian Penal Code also, processes under Sections 82 and 83 of the Code of Criminal Procedure have been issued. Normally, once a person has been declared absconder and processes are initiated under Sections 82 and 83 of the Code of Criminal Procedure, prayer for anticipatory bail is not to be entertained, in view of Supreme Court's direction in case of **Lavesh Vs State (NCT of Delhi)**, reported in **(2012) 8 SCC 730**.

Learned Counsel appearing on behalf of the petitioner has informed this court that the petitioner was not aware of institution of the complaint case as at no point of time any summons was served upon him. This made this Court to call for a report from the District Judge, Siwan, vide order, dated 13.05.2016, asking him to inform this Court as to whether the summons was, in fact, dispatched from the Court and service of summons upon the accused was ensured.

The learned District Judge, Siwan, has submitted a report, dated 16.07.2016. It appears from the report that though summons was dispatched by the Nazarat of the Court to Nazarat of Dwariya (U.P.), but without waiting for the service report, non-bailable warrant of arrest was issued. Subsequently, in the year 2016, learned Additional Chief Judicial Magistrate II, Siwan,

directed to issue processes under Sections 82 and 83 of the Code of Criminal Procedure.

From the report of the learned District Judge, Siwan, it is evident that learned Additional Chief Judicial Magistrate II, Siwan, before issuance of processes, under Sections 82 and 83 of the Cr.P.C., did not take into account the provisions contained therein.

Sections 82 and 83 of the Code of Criminal Procedure specifically provide that if any court has reason to believe that any person against whom a warrant has been issued by it has 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 specified place and at a specified time not less than thirty days from the date of publishing such proclamation. There is no mention in the report of learned Sessions Judge that the Court of learned Additional Chief Judicial Magistrate II, Siwan, recorded any where that he had reason to believe that the accused, after warrant of arrest having been issued against him, has absconded or concealed himself so that such warrant could not be executed.

Issuance of processes under Sections 82 and 83 of the Code of Criminal Procedure has serious consequences and is a significant coercive step for procuring attendance of an accused.

Before issuing of processes, the Court has to proceed with utmost care and caution and ensure that the accused or any person has deliberately absconded and has concealed himself so as to avoid his arrest. It is evident from the report of learned District Judge, Siwan that the summons was never served upon the petitioner.

For the present, I issue a note of caution to the Judicial Officers, exercising their powers under Sections 82 and 83 of the Cr.P.C., to be careful in future and to proceed, for issuance of warrant of arrest or Processes under Sections 82 and 83 of the Cr.P.C., only when there is something on record to show that despite service of summons, the person concerned has not turned up or despite best efforts made by the police, warrant of arrest could not be executed, as the case may be.

There is another aspect of the matter. Vide order, dated 13.05.2016 and 13.07.2016, learned District Judge, Siwan, was directed to submit his report.

By the Office note, dated 19.07.2016, made by the Registry, it was informed that the report of the learned District Judge, Siwan, had not been received by that date.

It, however, appears from the report that learned District Judge, Siwan had already sent his report through Fax on 16.07.2016. The Office note of the Registry dated 19.07.2016 is evidently incorrect. Because of the said incorrect office note, this



Court, vide order, dated 20.07.2016, had directed the learned District Judge, Siwan, to file a show cause reply as to why appropriate action be not recommended against him for not complying with this Court's order though he had already complied with the said orders. I **forewarn** the members of the Registry for the future that lapse of this nature may have very serious consequences.

Coming to the merits of the case, it is alleged that the complainant had agreed to purchase a tractor from the petitioner's agency and he had deposited a sum of Rs. 2, 00,000/- as an initial amount. The petitioner is said to have agreed that he would deliver the tractor if the rest of the amount was paid in installments. The petitioner refused to deliver the tractor and when the petitioner asked for refund of the amount which he had paid, the petitioner issued cheques, amounting to Rs. 50,000/- and 1,50,000/-, which, on being presented in the bank, were returned because of insufficient fund.

Learned Counsel appearing on behalf of the petitioner has submitted that no cognizance has been taken under Section 138 of the Negotiable Instrument Act by the learned Court below. He has also submitted that the dispute between the petitioner and the Opposite Party No.2, the complainant, is of civil nature.

Considering the submissions, as above, this application

is allowed.

Let the petitioner, Sri Prakash Verma @ Prakash Verma, in the event of his arrest or surrender before the Court below within six weeks, be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate-II, Siwan, in Complaint Case No. 953 of 2006, subject to the condition laid down under Section 438 (2) of the Code of Criminal Procedure.

(Chakradhari Sharan Singh, J.)

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