

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45091 of 2019

Arising Out of PS. Case No.-23 Year-1999 Thana- SAKURABAD District- Jehanabad

MANOHAR PRASAD @ MANOHAR SINGH Son of Bhusan Ram Resident
of Village - Patiyawan, P.S.- Sakurabad, Distt - Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kamleswari Prasad Yadav, Son of Late A.P. Yadav, Block Development Officer Ratani Faridpur Block, P.S.- Sakurabad, Distt - Jehanabad.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anil Kumar, Adv

For the Opposite Party/s : Mr.Anil Kumar, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 16-09-2019

Heard learned counsel for the petitioner as well as
the State.

2. The petitioner has sought for quashment of order dated 24.04.2018 passed in connection with Sakurabad P.S.Case No.23 of 1999 corresponding to G.R.No.724 of 1999 and Trial No.1999 of 2017.

3. Challenge is on the ground that though no pairvi was being done in the case on behalf of the petitioner, however, the case was running for prosecution evidence till 14.09.2017. Thereafter, the record was transferred to another court and the transferee court on 02.11.2017 cancelled the bail bond of the petitioner and ordered for issuance of non-bailable warrant of



arrest. Thereafter, no process was ever issued against the petitioner in the case and the court continued to pass order directing the office to issue non-bailable warrant of arrest. Thereafter, to issue process under Section 82 Cr.P.C. and thereafter to issue again process under Section 82 Cr.P.C. and abruptly by the impugned order declared the petitioner as absconder. Even the impugned order would reveal that there is no mention of service of any process against the petitioner at any point of time prior to the date the impugned order was passed. Even for issuance of proclamation order under Section 82 Cr.P.C., the court is required to have reason to believe that the person against whom a warrant has been issued, has absconded or has concealed himself so that such warrant cannot be executed. In the present case, no such report was submitted that the warrant is not being executed against the petitioner as the petitioner is absconding or concealing. In absence of recording of such “reason to believe”, the issuance of proclamation is itself bad in law.

4. Learned counsel for the petitioner submits that the petitioner is ready to cooperate with the trial and the petitioner shall suo motu appear before the learned court below within 15 days and the appearance of the petitioner may be treated as first appearance.



5. I find that the impugned order has been passed without proper compliance of requirement of law inasmuch as there is no proof of service of any notice or summons or execution of a warrant of arrest against the petitioner nor any material is there on the record to prove that warrant could not be executed for the reason that the petitioner was absconding or concealing his appearance. Hence, the impugned order is bad in law and not sustainable. The effect of the impugned order is miscarriage of justice.

6. Hence, the same is hereby quashed and this application stands allowed.

7. Petitioner shall appear suo motu before the learned court below within 15 days and the learned court below shall treat the appearance of the petitioner as first appearance and proceed with the trial expeditiously according to law.

8. Let a copy of this order be sent through FAX to the learned court below.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.09.2019
Transmission Date	17.09.2019

