

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1353 of 2018**

Dinesh Chandra Maheshwari S/o Late Pannalal Maheshwari Aged
About 85 Years (Wrongly Mentioned As 69 Years In Impugned
Order), R/o Sadar Bazar, Morena, District : Morena, Madhya Pradesh
--- **Petitioner**

Versus

State of Chhattisgarh (Erstwhile State of Madhya Pradesh) Through
Food Inspector, District Flying Squad Food And Drugs Administration,
Vivekanand Marg, Old District- Janjgir-Champa (Erstwhile Bilaspur
District), District : Janjgir-Champa, Chhattisgarh. --- **Respondent**

For the applicant	:	Mrs. Surya Kawalkar Dangi, Advocate
For the State	:	Mr. Chandresh Shrivastava, Dy. A.G.

Hon'ble Shri Justice Goutam Bhaduri

ORDER ON BOARD**14.01.2019**

1. The present petition is against the order dated 13.02.2018 passed by the JMFC, Dabhra whereby the petitioner was declared as absconder and subsequent order dated 27.02.2018 wherein it is held that the applicant is absconding.
2. Learned counsel for the applicant submits that though the criminal prosecution is pending, but before the petitioner is declared as absconder substantial service of notice and deliberate disobedience must be on record. It is stated that despite the fact the petitioner was not served withailable warrant itself, the arrest warrants were issued and even in absence of service of arrest warrant, the petitioner has been declared as absconder. It is contended that such order could not have been legally passed and even for issuance of non-

bailable warrant, the procedure has been laid down by the Supreme Court in *Raghuvansh Dewachand Bhasin vs. State of Maharashtra* {2012 (2) CCSE 730 (SC)}. It is stated that the order of non-bailable warrant and proclamation is bad in law. The petitioner is shown to be aged about 69 years and had there been any knowledge he would have attended the case and in absence of any notice to the petitioner, it cannot be presumed that he had knowledge.

3. Learned State Counsel opposes the arguments and submits that as per section 82 of Cr.P.C., whether to take evidence or not is a discretionary jurisdiction of the Court before a person is declared as absconding.
4. In order to appreciate the fact the entire order sheets of the court below are gone through. The order sheet would show that initially on 08.01.2001 the bailable warrant was issued to the present petitioner who was accused no.6 namely Dinesh Chandra Maheswari. Subsequently it would show that the said bailable warrant was not served and on 24.11.2001 arrest warrant was issued. However, subsequently it was amended and bailable warrant was issued. The issuance of bailable warrant continued and on 01.04.2003 the arrest warrant was issued to respondent which was to be served through the Superintendent of Police Morena. The issuance of arrest warrants was continued. The order sheet shows that till 2008 the same was not served. Lastly by order dated 13.02.2018 the petitioner was declared to be absconding. A perusal of the entire orders sheets would show that the petitioner was not served at any point of time, therefore, the ratio of law laid down by the Supreme

Court that even before the issuance of nonailable warrant, service of notice has to be followed. In this case since the service itself was not effected, the order dated 13.02.2018 cannot be protected u/s 82 of the Code of Criminal Procedure. The discretionary power is not vested with the court to issue an arrest warrant or declare the proclamation of absconding unless it is supported by the facts as it would have larger effect in the entire criminal jurisprudence.

5. Under the circumstances since it apparently appears from the order sheets that the petitioner was not served, the order dated 13.2.2018 wherein he was declared as absconder is quashed. It is further directed that the petitioner shall appear before the Court below on 14.02.2019 and furnish bail and the presence of the petitioner shall be considered de-novo from the date of issuance ofailable warrant and thereafter the trial Court may proceed in accordance with law.
6. With such observation/ direction, this petition stands disposed of.

**Sd/-
GOUTAM BHADURI
JUDGE**