

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No.407 of 2021

- Dr. Ram Kumar Nayak, S/o Shankar Lal Nayak, Aged About 40 Years, R/o Village Sarkanda, Police Station and Tahsil - Basna, District Mahasamund, Chhattisgarh

----- Petitioner

Versus

- Jaswant Singh Saluja, S/o Inder Singh Saluja, Aged About 57 Years, R/o Village Basna, Police Station and Tahsil- Basna, District Mahasamund, Chhattisgarh

----- Respondent

For Petitioner Mr. Vaibhav Goverdhan, Adv.

Hon'ble Justice Shri Sanjay K. Agrawal

Order On Board

06/04/2021

1. Mr. Vaibhav Goverdhan, learned counsel for the petitioner, submits that the present petition deserves to be disposed of in light of the order passed by this Court in CRMP Nos.303/2021 & 308/2021 on 17.03.2021.
2. In para 9 of the order dated 17.03.2021, this Court has held as under:-

“9. A careful perusal of the

aforesaid orders would show that on 06/08/2018, learned trial Magistrate issued warrant of arrest against the petitioner/accused and when it returned unserved, on 06/02/2019, he directed for issuance of fresh warrant of arrest against the petitioner/accused and fixed the matter for 07/03/2019 and signed it but thereafter, he again recalled that order and placed the matter for consideration on 07/02/2019. Then, on 07/02/2019, learned trial Magistrate declared the petitioner/accused as an absconder giving complete go-by to the provisions contained under sub-sections (1) and (2) of Section 82 of CrPC. It is quite apparent from the aforesaid orders that the Court has not recorded satisfaction that petitioner/accused is absconding or is concealing himself in order to avoid service of warrant of arrest issued against him and moreover, the proclamation has also not been published asking him to appear within 30 days at specified time and place in the manner prescribed under Section 82(2) of CrPC and straightway, petitioner/accused has been declared as absconder and permanent warrant of arrest has been issued against him. The procedure adopted by learned trial Magistrate is contrary to sub-sections (1) and (2) of Section 82 of CrPC and without following the procedure which is mandatory in character, the petitioner/accused has been declared as absconder and permanent warrant of arrest has been issued against him, which is absolutely illegal and bad in law, as such, the impugned orders are hereby set aside in both the petitions. Petitioner/accused is accordingly directed to appear before the trial Magistrate on 05/04/2021. The evidence has already

been closed and the matter has been heard, but since it has been stated at the Bar that the Judicial Magistrate First Class, Basna, Mahasamund who heard the matter has now been transferred, the trial Magistrate currently posted at Basna, Mahasamund is directed to decide the matter within 30 days from the date of receipt of copy of this order."

3. Accordingly, the petition under Section 482 of CrPC stands disposed of with the aforesaid terms. However, the petitioner will appear before the Trial Magistrate on 26.04.2021.

Sd/-
Sanjay K. Agrawal
Judge

Nirala