

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1078 OF 2021**

Satish Sambhaji Bhosale

....Petitioner.

Vs.

The State Of Maharashtra

....Respondent.

Ms. Ameeta Kuttikrishnan i/by Shubhada Khot for the Petitioner.

Mr. Amit Palkar, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 10th MARCH, 2021.****P.C.:-**

The Petitioner has questioned correctness of Order dated 2nd February, 2021, passed by learned Judicial Magistrate, First Class, Mhaswad, District Satara i.e. issuance of proclamation against him under Section 82 of the Code of Criminal Procedure, 1973 (for short, "*the Cr.P.C.*").

2 On earlier occasion, learned counsel for the Petitioner had contended that, without issuing non-bailable warrant or rather any warrant against the Petitioner, learned Magistrate has straight away proceeded to issue proclamation under Section 82 of the Cr.P.C.. This Court therefore, had directed the learned APP to produce before this Court record of the said case.

3 Learned APP today, has produced on record a report dated 2nd

February, 2021 signed by the Sub-Divisional Police Officer, Dahiwadi Division, Camp Waduj and also record of the said case i.e. CR No.238 of 2020, registered with Mhaswad Police station, District Satara.

4 Record indicates that, on 2nd February, 2021, the Sub-Divisional Police Officer, Dahiwadi Division had submitted a report in the Court of learned Magistrate, Mhaswad, stating that, against the absconding accused persons mentioned therein, the police machinery intended to adopt the procedure under Section 83 of the Cr.PC for attachment of property. It was therefore, prayed to issue a standing warrant against the Petitioner and other accused persons under Section 82 of the Cr. P.C. It has been also mentioned in the said report specifically that, standing warrant under Section 82 of the Cr.PC. be issued as police wanted to arrest accused persons.

5 The record further indicates that, the Trial Court instead of issuing warrant at the first instance against the Petitioners for proceeding further for issuing proclamation, instead has directly passed an Order under Section 82 of the Cr.PC. of issuance of proclamation.

6 As learned Magistrate has not complied with the basic necessities for issuing proclamation, it is imperative for this Court to interfere with the impugned Order dated 2nd February, 2021, passed by learned Judicial Magistrate, First Class, Mhaswad, District Satara.

In view thereof, impugned Order dated 2nd February, 2021 is set

aside.

Petition is accordingly allowed in terms of prayer clause (c).

7 It is however made clear that, the investigating agency is at liberty to adopt necessary procedure, as contemplated under Section 82 of Cr.P.C. for issuing proclamation against the Petitioner afresh, by complying with all the necessary provisions of law.

(A.S. GADKARI, J.)

Sanjiv S.
Mashalkar

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by Sanjiv S.
Mashalkar
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