

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50235 of 2023

Arising Out of PS. Case No.-69 Year-2022 Thana- PHENHARA District- East Champaran

UPENDRA RAI @ UPENDRA RAY Son of Late Nandu Rai Resident of
village - Gaibandhi, P.S. - Phenhara, Distt. - East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Anuj Kumar Son of Jhunu Babu Singh Resident of vill - Gaibandhi, P.S. -
Phenhara, Distt. - East Champaran

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh
For the Opposite Party/s : Mr. Uday Pratap Singh

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

6 18-01-2024 1. Heard learned counsel for the petitioner and
learned APP for the State along with learned counsel for the O.P.
No. 2.

2. The learned counsel for the petitioner submits that
the present quashing application has been filed seeking quashing
of the order dated 07.02.2023 passed in Criminal Revision No.
23 of 2023 by the learned Sessions Judge, East Champaran,
Motihari affirming the order dated 04.01.2023 passed by the
learned ACJM-VIII in Phenhara P.S. Case No. 69 of 2022
whereby process under Section 82 Cr.P.C was issued against the
petitioner.

3. The learned counsel for the petitioner submits that
he is not making any submission on merits of the case with



regard to the allegation as alleged in Phenhara P.S. Case No. 69 of 2022, it is next submitted that petitioner with respect to an occurrence dated 16.05.2022 came to be implicated in Phenhara P.S. Case No. 69 of 2022 dated 17.05.2022 registered under Section 147, 148, 149, 341, 323, 379, 307 and 120B of the IPC read with Section 27 of the Arms Act.

4. The learned counsel for the petitioner next submits that petitioner on coming to know that he has been implicated in Phenhara P.S. Case No. 69 of 2022 on 05.07.2022 filed ABP No. 2375 of 2022 before the learned District & Sessions Judge, East Champaran, Motihari, the said ABP No. 2375 of 2022 came to be rejected by an order dated 12.10.2022, thereafter on 20.12.2022, the petitioner moved before this Court and filed Criminal Miscellaneous No. 4698 of 2023, it is submitted that though the case was filed on 20.12.2022 on token number but when criminal miscellaneous number was given, the same was of the year 2023.

5. The learned counsel further submits that on 04.01.2023, the I.O. of the case filed an application before the learned Trial Judge seeking process under Section 82 Cr.P.C. and the learned Trial Judge on the same day i.e. 04.01.2023 issued an order granting process under Section 82 Cr.P.C.



thereafter process under Section 83 Cr.P.C. was also issued on 19.05.2023. It is submitted that the process under Sections 82 and 83 Cr.P.C. were issued while the anticipatory bail application of the petitioner was pending consideration before this Court in Criminal Miscellaneous No. 4698 of 2023, it is thus submitted that it is not in dispute that petitioner was availing his remedies available in law, as such, it cannot be said that petitioner was absconding from the law. It is also submitted that sections under which Phenara P.S. Case No. 69 of 2022 was instituted were for cognizable offence, for which the police did not require any warrant to be issued by the Court for arresting the accused persons. It is further submitted that the Courts are not meant to aid the police in investigation.

6. The learned counsel next submits that a person is said to be an absconder who flees from the law but in the present case, the petitioner was availing his remedy before this court in Criminal Miscellaneous No. 4698 of 2023. It is further submitted that Criminal Miscellaneous No. 4698 of 2022 was taken up on 08.08.2023 when a learned Co-ordinate Bench of this court directed it to be listed after disposal of Criminal Miscellaneous No. 50235 of 2023 i.e. the present quashing application.



7. The learned APP for the State and the learned counsel for the O.P. No. 2 are not in a position to rebut the submission of the learned counsel for the petitioner that petitioner was availing his remedies available in law prior to the application being filed by the I.O. seeking process under Sections 82 and 83 of the Cr.P.C.

8. The learned APP for the State very fairly conceded to the propositions made by the learned counsel for the petitioner, but the learned counsel for the O.P. No. 2 was vehemently opposing the application, but was not able to satisfy the Court with regard to the submission made by the learned counsel for the petitioner, on the legal aspect of Sections 82 and 83 Cr.P.C, as recorded hereinabove but made a submission that I.O. has unfettered powers under the Cr.P.C. to file an application seeking process under Section 82 Cr.P.C, on which the learned counsel for the petitioner vehemently rebuts the submission of the learned counsel for the O.P. No. 2 and submits that it appears that the learned counsel for the O.P. No. 2 does not have even the basic concept of proceeding related to Sections 82 and 83 Cr.P.C. which stand settled by a catena of judgment passed by the Hon'ble Supreme Court and this Court. The learned counsel for the petitioner next draws the attention of the Court to the Order dated 04.07.2022 in Criminal



Miscellaneous No. 38750 of 2021 (Santosh Yadav @ Santosh Kumar Yadav Vs. State of Bihar) to submit that this Court while considering anticipatory bail of the petitioner of the said case had considered the issue of Sections 82 and 83 Cr.P.C. in detail and thereafter submits that it is settled principle of law that the Court cannot come to the aid of the police by issuing process under Sections 82 and 83 Cr.P.C. for appearance of the accused moreso when the accused is availing his remedies in accordance with law and cannot issue process under Section 82 Cr.P.C. on mere asking of the police.

9. Since the submissions made by the learned counsel for the O.P. No. 2 is bereft of any merit, hence the order dated 07.02.2023 passed in Criminal Revision No. 23 of 2023 by the learned Sessions Judge, East Champaran, Motihari affirming the order dated 04.01.2023 passed by the learned ACJM-VIII in Phenara P.S. Case No. 69 of 2022 whereby process under Section 82 Cr.P.C was issued against the petitioner, **is hereby quashed.**

10. Accordingly, the present quashing application stands allowed.

(Satyavrat Verma, J)

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