

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70695 of 2023

Arising Out of PS. Case No.-407 Year-2022 Thana- DAUDNAGAR District- Aurangabad

RAVI KUMAR son of Deonath Singh Village- Mayapur Ps- Daudnagar Dist-
Aurangabad

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Mithilesh Kumar Singh son of Late Shiv Pujan Singh Village- Mayapur Po-
Dhanawar Ps- Dudhnagar Dist- Aurangabad

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Mukesh Kant, Advocate Mrs. Deepika Sharma, Advocate Mr. Rajat Kumar Tiwary
For the Opposite Party/s	:	Mr. Nagendra Prasad, APP Mr. Santosh Chandra Bhaskar, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 18-07-2024 This application has been filed for quashing the order dated 15.07.2023 and 17.08.2023 passed by the S.D.J.M., Daudnagar, Aurangabad in Daudnagar P.S. Case No. 407 of 2022.

2. It is the contention of the petitioner is that the application for issuance of process under Section 82 and 83 of the Cr.P.C. was not supported by any document and the learned counsel for the petitioner has relied upon a judgment of this Court in the case of **Krishna Murari Yadav V/s The State of Bihar** reported in **2005 SCC OnLine Pat 712**.

3. The learned counsel for the O.P. No. 02 and the



learned APP for the State have vehemently opposed the prayer of the petitioner and have submitted that even without the supporting affidavit, the Court below has power to issue process under Section 82 and 83 of the Cr.P.C.

4. I have considered the submissions of the parties.

5. Section 82 and 83 of the Cr.P.C. reads as follows:-

“82. Proclamation for person absconding.—

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:—

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making



such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).

83. Attachment of property of person absconding.—

(1) The Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person:

Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local jurisdiction of the Court, it may order the attachment simultaneously with the issue of the proclamation.

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the district in which the land is situate, and in all other cases—

(a) by taking possession; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the payment of rent on delivery of property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached



consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908).”

6. This Court in the case of **Krishna Murari Yadav**

V/s The State of Bihar (Supra) has held as follows:-

“15. Counsel for the petitioner submits that the warrant of arrest was issued by the C.J.M. in violation of the provisions under Section 73 Cr. P.C., the Magistrate should not have issued any warrant of arrest against the petitioner and other accused persons just in order to compel the petitioner to appear before the police for adding investigation. Under Section 73 Cr. P.C. the Magistrate has got jurisdiction to issue warrant of arrest for appearance of the case before the Court, but not before the police.

18. Another order which has been challenged by the petitioner is the order dated 4.8.2005 passed by the C.J.M., Patna on a petition filed by the Investigating Officer on 3.8.2005. In this petition composite prayer has been made by the Investigating Officer for issuance of the order of proclamation under Section 82 Cr. P.C. as well as the order of attachment under Section 83 Cr. P.C. This unaffidavited petition has been brought on the record of the case as Annexure-3. In this petition it has been stated that the accused persons are absconding and there is an apprehension that after disposing of their movable and immovable property, they may abscond. The C.J.M., has passed order under Section 82 Cr. P.C.



for proclamation, in the margin of the petition itself. Counsel for the petitioner has brought on record the complete order-sheet of the case as Annexure-4. The proclamation order under Section 82 Cr. P.C. has been passed by-the Chief Judicial Magistrate do not indicate that the court had any reason to believe that the person against whom such prayer has been made are either absconding or concealing themselves even after issuance of warrant of arrest. Section 82(1) Cr. P.C. reads as follows:—

“If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.”

19. *The expression “Reason to believe” occurring in this section suggests that the Magistrate must be substantively satisfied that the person has absconded or has concealed themselves on the materials before him. Under Section 82 Cr. P.C. the Magistrate issuing proclamation must record his satisfaction that the accused has absconded or concealed himself, the Magistrate can grant permission for proclamation only on being fully satisfied and it should never been allowed in a routine manner. The order which has been passed by the Magistrate neither shows his satisfaction nor indicates that he had any reason to believe for passing such*



order. The order passed by the Magistrate is illegal also because on an unaffidavited petition filed by the I.O. such order has been passed.”

7. Considering the law laid down by this Court in the case of ***Krishna Murari Yadav V/s The State of Bihar (supra)*** and the fact that applications for issuance of process under Section 82 and 83 of Cr.P.C. were filed without being supported on affidavit, this application is allowed, and the order dated 15.07.2023 and 17.08.2023 passed by the S.D.J.M., Daudnagar, Aurangabad in Daudnagar P.S. Case No. 407 of 2022 are hereby quashed.

(Sandeep Kumar, J)

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