IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.3289 of 2024

Rohit Kumar Singh, aged about 26 years, S/o Raj Mohan Singh, R/o Village Banai, P.O. & P.S. Panki, District Palamau.

… Petitioner

Versus

The State of Jharkhand … Opposite Party

For the Petitioner : Mr. Lukesh Kumar, Advocate
For the State : Ms. Vandana Bharti, Addl.P.P.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 with a prayer to quash the order dated 21.08.2024 passed by the learned Sub-Divisional Judicial Magistrate, Palamau in connection with Chainpur P.S. Case No.104 of 2024 registered for the offences punishable under Section 376 of the Indian Penal Code and under Sections 3, 4 of the Dowry Prohibition Act whereby and where under the learned Sub-Divisional Judicial Magistrate, Palamau has issued the proclamation under Section 82 of the Code of Criminal Procedure against the petitioner who is the accused person of the said case.

3. The brief fact of the case is that on 21.08.2024, a petition with Execution Report of the Non-bailable Warrant of Arrest issued against the petitioner, was filed by the Investigating Officer of the case with a prayer for issuance of proclamation under Section 82 of the Code of Criminal Procedure against the petitioner. The learned Sub-Divisional Judicial Magistrate, Palamau directed

issue of the proclamation under Section 82 of the Code of Criminal Procedure without fixing time and place for appearance of the petitioner.

4. Learned counsel for the petitioner submits that the proclamation under Section 82 of the Code of Criminal Procedure has been issued vide order dated 21.08.2024 without following the due process of law and without fixing any time or place for appearance of the petitioner which is a *sine qua non* for issuing the proclamation under Section 82 of the Code of Criminal Procedure. Hence, it is submitted that the prayer as prayed for in this Criminal Miscellaneous Petition be allowed.

5. Learned Addl.P.P. appearing for the State on the other hand vehemently opposes the prayer of the petitioner for quashing the order dated 21.08.2024 passed by the learned Sub-Divisional Judicial Magistrate, Palamau in connection with Chainpur P.S. Case No.104 of 2024 and submits that the very fact that the proclamation under Section 82 of the Code of Criminal Procedure was issued against the petitioner itself shows that the petitioner was to appear before the learned Sub-Divisional Judicial Magistrate, Palamau within 30 days. Hence, it is submitted that this Criminal Miscellaneous Petition, being without any merit, be dismissed.

6. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law that in case the court decides to issue the proclamation under Section 82 of the Code of Criminal Procedure, it must mention the time and place for appearance of the petitioner in the order itself by which the proclamation under Section 82 of the Code of Criminal Procedure is issued. As already indicated above since the learned Sub-Divisional Judicial Magistrate, Palamau has not mentioned any time or place for appearance of the

petitioner in the said order dated 21.08.2024, hence, this Court has no hesitation in holding that the learned Sub-Divisional Judicial Magistrate, Palamau has committed illegality by issuing the said proclamation under Section 82 of the Code of Criminal Procedure without complying with the mandatory requirements of law. Hence, the order dated 21.08.2024 being not sustainable in law; the continuation of the same will amount to abuse of process of law. Therefore, this is a fit case where the order dated 21.08.2024 passed by the learned Sub-Divisional Judicial Magistrate, Palamau in connection with Chainpur P.S. Case No.104 of 2024, be quashed and set aside *qua* the petitioner only.

7. Accordingly, the order dated 21.08.2024 passed by the learned Sub-Divisional Judicial Magistrate, Palamau in connection with Chainpur P.S. Case No.104 of 2024, is quashed and set aside *qua* the petitioner only.

8. The learned Sub-Divisional Judicial Magistrate, Palamau may pass a fresh order in accordance with law.

9. In the result, this Criminal Miscellaneous Petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 04th of December, 2024
AFR/ Saroj