

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.374 of 2022

Arising Out of PS. Case No.-67 Year-2021 Thana- BENIPATTI District- Madhubani

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Kaushik Singh @ Santosh Singh Son of Musafir Singh Resident of Village -
Mahmadpur, P.s.- Benipatti, Distt.- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Govt. of Bihar, Patna. Bihar
2. The Home Secretary, Govt. of Bihar, Patna. Bihar
3. The Director General of Police, Govt. of Bihar, Patna. Bihar
4. The Inspector General (I.G.) of Police, Darbhanga. Bihar
5. The Superintendent of Police, Distt. Madhubani. Bihar
6. The Sub-Divisional Police Officer (SDPO) Benipatti, Distt.- Madhubani
Bihar
7. The Circle officer (C.O.), Benipatti, Distt.- Madhubani Bihar
8. The Station House Officer (SHO), P.s.- Benipatti, Distt.- Madhubani. Bihar
9. The Investigating officer (I.O.), P.s.- Benipatti, Distt.- Madhubani. Bihar

... .. Respondent/s

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with

Criminal Writ Jurisdiction Case No. 343 of 2022

Arising Out of PS. Case No.-67 Year-2021 Thana- BENIPATTI District- Madhubani

=====

Musafir Singh Son of Late Tunni Lal Singh Resident of Village- Mahmadpur,
P.S.- Benipatti, District- Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Home Secretary Government Of Bihar,
Patna Bihar
2. The Home Secretary Government of Bihar, Patna. Bihar
3. The Director General of Police, Government of Bihar, Patna Bihar
4. The Inspector General (I.G.), Of Police, Darbhanga Bihar
5. The Superintendent of Police, District Madhubani Bihar
6. The Sub- Divisional Police Officer (SDPO), Benipatti, District- Madhubani.
Bihar
7. The Circle Officer (C.O.), Benipatti, District- Madhubani Bihar



8. The Station House Officer (SHO), P.S.- Benipatti, District- Madhubani Bihar
9. The Investigation Officer (I.O.), P.S.- Benipatti, District- Madhubani. Bihar

... .. Respondent/s

Appearance :

(In Criminal Writ Jurisdiction Case No. 374 of 2022)

For the Petitioner/s : Mr. Anand Kumar Ojha, Sr. Advocate
Mr. Ravindra Kumar Singh, Advocate

For the Respondent/s : Mr. Suman Kumar Jha, AC to AAG-3

(In Criminal Writ Jurisdiction Case No. 343 of 2022)

For the Petitioner/s : Mr. Anand Kumar Ojha, Sr. Advocate
Mr. Ravindra Kumar Singh, Advocate

For the Respondent/s : Mr. Md. Nadim Seraj, GP-5

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 30-03-2026

Both the writ petitions arise out of orders passed by the learned Additional Chief Judicial Magistrate-I, Benipatti in G.R. No. 200 of 2021 in connection with Benipatti P.S. Case No. 67 of 2021 and hence, both the petitions have been taken up together for disposal.

02. Criminal Writ Petition No. 343 of 2022 has been filed for quashing of the order dated 06.04.2021 passed in G.R. No. 200 of 2021 by learned Additional Chief Judicial Magistrate-I, Benipatti against the petitioner and others ordering for issuance of warrant, proclamation and attachment of properties of the petitioner in connection with Benipatti P.S. Case No. 67 of 2021, dated 29.03.2021 for the offences under Sections 147, 148, 149, 341, 323, 324, 325, 326, 307, 302 and



120B of the Indian Penal Code and Section 27 of the Arms Act.

03. Criminal Writ Petition No. 374 of 2022 has been filed for quashing of the order dated 01.04.2021 passed in G.R. No. 200 of 2021 by learned Additional Chief Judicial Magistrate-I, Benipatti against the petitioner and others ordering for issuance of warrant, proclamation and attachment of properties of the petitioner in connection with Benipatti P.S. Case No. 67 of 2021, dated 29.03.2021 for the offences under Sections 147, 148, 149, 341, 323, 324, 325, 326, 307, 302 and 120B of the Indian Penal Code and Section 27 of the Arms Act.

04. Briefly stated, the facts of the case, as could be culled out from the record, are that Benipatti P.S. Case No. 67 of 2021 was instituted on the basis of fardbeyan of informant Ram Narayan Singh for an occurrence which took place at around 1.00 PM on 29.03.2021. In the fardbeyan, the informant stated about hearing gun shot and commotion nearby his place and when he reached the place he found the petitioners as well as a number of co-accused persons, who were variously armed with firearms and other weapons and they assaulted the son and nephews of the informant killing them on the spot and seriously injuring three family members of the informant. The petitioners and 25 other persons have been named as assailants. It further



transpires that subsequently two other injured persons succumbed to their injuries during treatment. Altogether 35 persons have been named in the FIR along with 10-12 unknown persons. Thus, FIR was instituted for the offences under Sections 147, 148, 149, 341, 323, 324, 325, 326, 307, 302 and 120B of the Indian Penal Code and Section 27 of the Arms Act. It further transpires from the record that the police filed requisitions before learned Additional Chief Judicial Magistrate-I, Benipatti on 31.03.2021 and 06.04.2021, respectively for issuance of warrant, proclamation and attachment of property of the petitioners under the provisions of Sections 82 and 83 of the Code of Criminal Procedure (hereinafter the 'CrPC'). Acting upon the requisitions, the learned Additional Chief Judicial Magistrate-I, Benipatti allowed the requisitions and ordered for issuance of arrest warrant, proclamation and warrant for attachment simultaneously. These orders are under challenge before this Court.

05. Learned senior counsel, Mr. Anand Kumar Ojha, appearing on behalf of the petitioners submitted that the impugned orders are completely illegal. Learned senior counsel further submitted that the petitioners are innocent and have been falsely implicated in this case at the instance of their political



rivals. They have no involvement in the whole occurrence. Petitioner Musafir Singh is an old person aged 82 years, who had been sleeping in his house when the occurrence is stated to have taken place. Petitioner Kaushik Singh @ Santosh Singh is son of petitioner Musafir Singh. The allegation against the petitioners and even other co-accused persons is not believable for the reason that the occurrence took place on the day of festival of Holi and being covered with colour and mud, identity of the any person, that too, from 100-500 meters was simply not believable. But informant named the assailants of his family members with specific details. The FIR was not lodged immediately but after delay of 10 hours though the police station was merely at distance of 3-4 km and it was a case of murder of three persons with serious injuries to three other persons. This shows false implication by the informant. Though the police came to know about involvement of only 5-6 persons in the case, still it has been proceeding against all the FIR named persons due to political pressure. Learned senior counsel further submitted that the main assailant Praveen Jha was apprehended and his confessional statement was recorded and he did not name the petitioners in his confessional statement. Similarly, one of the victims in his statement on camera did not



name the petitioners as assailants. The allegations of the informant are also not believable in the background of the fact that the informant claims to be an eye witness to the alleged occurrence in which about 50 persons committed the crime and shots were fired indiscriminately by 25 persons in group of five each but informant did not receive a single scratch what to say of any bullet or sharp cut injury. Learned senior counsel thus submitted that in this background of facts, the illegality of the impugned orders become magnified.

06. Assailing the impugned orders learned senior counsel at the outset submitted that the petitioners would not have otherwise approached this Court in the writ jurisdiction but for the manifest illegality. The occurrence is stated to have taken place on 29.03.2021 at 1.00 PM and the FIR was lodged at 10.30 PM on the same day. Just two days thereafter, the police hurriedly filed the written requisition without any affidavit or genuine reason or evidence seeking issuance of warrant, proclamation and attachment of the property of the petitioners and others. A few days thereafter, on 06.04.2021 another application was filed with same prayer again without affidavit, reason or evidence against the petitioner Musafir Singh and others. The learned trial court, without batting eye-lid, allowed



the requisitions vide orders dated 01.04.2021 and 06.04.2021 and attachment was done on 11.04.2021 and 25.04.2021 violating the provisions of the Code of Criminal Procedure. There is complete non-application of judicial mind and procedure laid down in the statute has been given a go bye in making the requisition and passing the order.

07. Learned senior counsel next submitted that the police without conducting proper investigation and without filing any affidavit for issuance of warrant, by two composite requisitions, dated 31.03.2021 and 06.04.2021, respectively sought issuance of warrant, proclamation and attachment simultaneously stating therein that these coercive processes were required to secure the arrest of the accused. Learned senior counsel contended that such course of action is unknown to the scheme of the Code of Criminal Procedure as Sections 73, 82 and 83 of the CrPC operate in distinct stages and cannot be invoked together merely to facilitate the arrest. Learned senior counsel pointed out that invocation of extraordinary coercive provisions without following the procedural due process amounts to violation of fundamental right of a person under Article 21 of the Constitution and such invocation demands urgent intervention by this Court under Article 226 of the



Constitution. The action of the police constitutes misfeasance in public office and amounts to breach of trust and malafide exercise of authority. Learned senior counsel referred to the case of ***Dawood Ibrahim Kaskar Vs. State of Maharashtra, (2010) 10 SCC 438***, wherein the Hon'ble Supreme Court held that a warrant under Section 73 CrPC can be issued only for production of the accused before the court and not in aid of police investigation or arrest. The Hon'ble Supreme Court very clearly held that the court cannot pass orders under this section on mere asking of the police and has to apply its judicial discretion. The court cannot act in the aid of police. Learned senior counsel next referred to the case of ***Nalini Kant Agrawal Vs. State of Bihar, 2003(1) PLJR 350***, wherein it has been held that though the court has power under Section 73 CrPC to issue warrant, it is only for the purposes of securing appearance before the court and not before the police. The power to secure warrant or issue warrant of arrest under Section 73 CrPC cannot be used solely for production of accused before the police in aid of investigation. It has been further held that while issuing warrant under Section 73 CrPC the Magistrate has to record finding that the accused persons were evading their arrest and this finding would depend on appreciation of facts pleaded in



that regard and not on any *ipse dixit* of the investigating officer. If that is not done then Section 82 and/or Section 83 CrPC would not come into play and would be illegal exercise of jurisdiction. Learned senior counsel next referred to the case of ***Pinki Kumari & Anr. Vs. The State of Bihar and Others*** in Criminal Writ Jurisdiction Case No. 712 of 2022, order dated 26.08.2022, wherein the learned Co-ordinate Bench held that the impugned order was passed by the learned trial court in complete haste. Learned Co-ordinate Bench further observed that the requisition filed by the I.O. was not supported by any affidavit and nothing was indicated as to when and what efforts were made by the I.O. to execute the warrant. It was further observed that there was nothing on record to indicate that the I.O. had ever sent any notice calling upon the accused persons to appear in the police station for purpose of interrogation. Thus, the learned Co-ordinate Bench allowed the writ petition finding it in complete violation of law and the judgments on the subject.

08. Learned senior counsel further submitted that after the requisitions have been made in violation of law, the learned trial court without applying independent judicial mind, without taking note of any report or affidavit demonstrating failure of arrest, without recording satisfaction that the accused



was absconding or concealing himself and without complying the mandatory 30 days period after proclamation before attachment, on mere asking of the I.O., passed a composite order in the case of Musafir Singh, just a day after requisition and in the case of Kaushik Singh @ Santosh Singh on the same day, for issuance of warrant under Section 73, proclamation under Section 82 and attachment of property under Section 83 of the CrPC, the impugned orders thus violate the procedure established by law. Learned counsel again referred to the case of ***Pinki Kumari*** (*supra*) submitted that the learned Co-ordinate Bench while deprecating the act of police authority also criticized the passing of order invoking Sections 82 and 83 of the CrPC by the learned trial court in mechanical and routine manner and observed that the power under Sections 82 and 83 are very drastic in nature and must only be used by applying judicial mind and on reasonable basis.

09. Learned senior counsel next referred to the case of ***Usha Mishra Vs. State of Bihar, 2007(3) PLJR 748***, wherein the learned Single Judge held that the judicial process cannot be converted into an aid of investigation or a force multiplier for executive excess.

10. Learned senior counsel referred to Section 82



CrPC to stress that the court failed to record its reasoning to believe that the petitioners were absconded or concealing themselves and precondition of issuance of warrant was not met and warrant was issued then only proclamation under Section 82 CrPC. Further, the learned trial court did not consider at all the proviso to Section 83 CrPC that at the time of issuance of proclamation, the court is satisfied by affidavit or otherwise that the person in relation to whom the proclamation is to be issued was about to dispose of the whole or any part of his property or was about to remove the whole or any part of his property from the local jurisdiction of the Court, then only any order for attachment could simultaneously be issued with the proclamation. Thus, learned senior submitted that the impugned orders are completely perverse and cannot be sustained on record.

11. Learned senior counsel, thereafter, submitted that the settled common law maxim *Sublato fundamento cadit opus* provides that if the foundational order/action is illegal, void or non-existent, all subsequent or consequential actions built upon it automatically collapse. In the present case, the requisitions of the I.O. dated 31.03.2021 and 06.04.2021, respectively were illegal and in violation of law and procedural



due process, hence all the subsequently actions would already fall having no independent legal existence and the further order of the learned trial court issuing the proclamation under Sections 82 and 83 CrPC becomes unconstitutional. Learned senior counsel relied on the case of *State of Punjab Vs. Davindere Pal Singh Bhullar, (2011) 14 SCC 770*, wherein the Hon'ble Supreme Court held that if the initial order is bad then all the subsequent and consequential proceedings would suffer from illegality as it strikes at the very root of the fundamental order.

12. Learned senior counsel next submitted that the petitioners were put to extreme hardship by the illegal requisition made by the police authority and thereafter, by the illegal orders passed by the learned trial court and therefore, they are entitled for compensation. The attachment of the petitioners' residential premises, damage to property and removal of household articles resulted in loss of shelter, dignity and social standing constituting a direction invasion of Articles 14 and 21 of the Constitution. Mr. Ojha further submitted that the Hon'ble Supreme Court has consistently held that where a person is prejudiced by illegal or arbitrary action of the police or judicial authority resulting in violation of Article 21 of the



Constitution, monetary compensation is an appropriate and effective remedy in public law, forming an integral part of constitutional justice under Articles 32 and 226 of the Constitution. On this aspect of the matter, the learned senior counsel referred to the case of ***Rudul Sah Vs. State of Bihar, (1983) 4 SCC 141***, wherein the Hon'ble Supreme Court held that compensation is an appropriate, necessary and effective remedy for violation of Article 21 and further observed that the right to compensation is some palliative for the unlawful acts of instrumentalities of the State. In the case of ***Nilabati Behera Vs. State of Odisha, (1993) 2 SCC 746***, the Hon'ble Supreme Court held that award of compensation in a proceeding under Article 32 or 226 is a remedy available in public law, based on strict liability for contravention of fundamental rights.

13. Mr. Ojha thus submitted that the composite police requisitions and consequential judicial orders impugned herein be declared wholly arbitrary and illegal and in violation of procedure established by law and appropriate action and departmental proceeding be initiated against the police officials who violated the right of the petitioners by abusing such drastic power given to the police authority. Mr. Ojha further submitted that just and reasonable compensation be awarded to the



petitioners for violation of their fundamental rights.

14. Lastly, Mr. Ojha submitted that the directions be issued for judicial sensitization and training to the learned Judicial Officers of the Bihar regarding procedural due process and interface with the prevailing law with respect to invocation of Sections 82 and 83 CrPC/84 and 85 BNSS and judicial adjudication.

15. Learned counsel appearing on behalf of State-respondents at the outset submitted that the present writ petitions are not maintainable as judicial orders have been challenged by filing the writ petitions. Moreover, the relief sought by the petitioners have become infructuous after arrest of the petitioners and the orders dated 01.04.2021 and 06.04.2021 have lost their efficacy. The petitioners have also been enlarged on bail. Learned counsel denied the contention made on behalf of the petitioners that police has not properly investigated the matter and submitted that after thorough investigation charge sheet and supplementary charge sheet have been filed and the case was found true against the petitioners and others. However, learned counsel conceded that the requisition made by the I.O. is not supported by affidavit or reasons or by any evidence. Learned counsel further admitted that the impugned orders are



not in accordance with the procedure prescribed by the law. However, he submitted that it is one of the rarest of rare cases and circumstances were of such nature that passing of the impugned orders became necessary as it was a case of murder of five persons of a village and situation has escalated and the situation could be contained only after passing of the impugned orders.

16. Learned senior counsel appearing on behalf of the petitioners by way of reply submitted that he does not press for quashing of the impugned orders in the light of subsequent development but would still pray this Court to pass appropriate orders for grant of compensation to the petitioners and sensitization of the Judicial Officers and referred to interlocutory applications filed in this regard.

17. I have given my thoughtful consideration to the rival submission of the parties. I find merit in the submission of learned counsel for the State-respondents that the impugned orders could not be assailed in the present writ petitions. The Hon'ble Supreme Court in the case of *Neeta Singh & Ors. Vs. State of Uttar Pradesh & Ors.*, 2024 SCC OnLine SC 5761 and *Pradnya Pranjal Kulkarni Vs. State of Maharashtra & Anr.*, 2025 SCC OnLine SC 1948, has held that against a judicial



order no writ petition is maintainable under Article 226 of the Constitution of India. Subsequent development also show the writ petition on this point of challenge to the orders of learned ACJM-I, Benipatti has become infructuous.

18. If the petitioners did not press their relief regarding challenge to the orders of learned ACJM-I, Benipatti of simultaneously issuing warrant under Section 73, proclamation under Section 82 and order of attachment under Section 83 of CrPC, the whole discussion about legality of the impugned orders would now be only for academic purposes. If this Court could not consider the challenge to the judicial order in the writ petition, any further action based on such consideration would not be proper. Precisely for this reason, the claim of compensation by the petitioners need not be considered by this Court as such right would flow only on account of any finding recorded by the Court on the basis of impugned orders.

19. Moreover, in any case grant of compensation would be an ancillary relief and if the main relief goes, there would be no scope for grant of any ancillary relief. Further, under the Criminal Writ Jurisdiction, claim of compensation could not be assessed or considered. However, the petitioners are always at liberty to have recourse of law in appropriate



proceeding for enforcement of their right or for compensation for violation of their rights.

20. But, at the same time, the Court would like to take note of the irregularity committed by the learned trial court in passing the impugned orders dated 06.04.2021 and 01.04.2021. After going through the impugned orders, I must record my disappointment about the competence of the judicial officer passing such orders. Though, this Court is not supposed to look into the illegality or validity of the judicial orders under its writ jurisdiction under Article 226 of the Constitution of India, still, the sheer illegality of the orders stare on the face of record.

21. Time and again the Hon'ble Supreme Court has held that warrant of arrest cannot be issued on asking of the police authority. Such warrant can be issued only to ensure presence of the accused before the court and it cannot be in aid of police investigation or to make such person join the investigation. Paragraph 24 of the case of ***Dawood Ibrahim Kaskar*** (*supra*) reads as under:-

“Now that we have found that Section 73 of the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person



who is accused of a non-bailable offence and is evading arrest, we need answer the related question as to whether such issuance of warrant can be for his production before the police in aid of investigation. It cannot be gainsaid that a Magistrate plays, not infrequently, a role during investigation, in that, on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen handwritings etc. However, in performing such or similar functions the Magistrate does not exercise judicial discretion like while dealing with an accused of a non-bailable offence who is produced before him pursuant to a warrant of arrest issued under Section 73. On such production, the Court may either release him on bail under Section 439 or authorise his detention in custody (either police or judicial) under Section 167 of the Code. Whether the Magistrate, on being moved by the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with Section 167 (3) of the Code. Since warrant is and can be issued for appearance before the Court only and not before the police and since



authorisation for detention in police custody is neither to be given as a matter of course nor on the mere asking of the police, but only after exercise of judicial discretion based on materials placed before him, Mr. Desai was not absolutely right in his submission that warrant of arrest under Section 73 of the Code could be issued by the Court solely for the production of the accused before the police in aid of investigation."

Similarly, in ***Usha Mishra*** (*supra*) the learned Single Judge of this Court has quoted the observation made in the case of ***Nalini Kant Agrawal*** (*supra*), wherein it has been held that though the court has power under Section 73 CrPC to issue warrant, it is only for the purposes of securing appearance before the court and not before the police. The power to secure warrant or issue warrant of arrest under Section 73 CrPC cannot be used solely for production of accused before the police in aid of investigation. It has been further held that while issuing warrant under Section 73 CrPC the Magistrate has to record finding that the accused persons were evading their arrest and this finding would depend on appreciation of facts pleaded in that regard and not on any *ipse dixit* of the investigating officer. If that is not done then Section 82 and/or Section 83 CrPC



would not come into play and would be illegal exercise of jurisdiction.

22. Similarly, precondition of issuance of proclamation under Section 82 of the CrPC were not met and the learned trial court did not consider this aspect for a moment that the police did not make any effort to apprehend the accused persons and failed to show before the learned Magistrate that the petitioners were evading arrest. If the police authorities failed to show the valid reasons for issuance of warrant, the court cannot pass any order on the application of police authority seeking proclamation under Section 82 of the CrPC. Thereafter, a proclamation issued under Section 82 of the CrPC has also to satisfy the condition that the court publishing the proclamation required the accused to appear at a specified place and specified time not less than 30 days from the date of publishing such proclamation. But no such steps have been taken. Thereafter, the proviso to Section 83 of the CrPC regarding apprehension of disposal of the property by the petitioners was not satisfied for simultaneous issuance of proclamation and order of attachment. It is also pertinent to take note of that if the statute provides for doing a thing in certain manner, it is to be done in that manner only or not at all and reliance could be placed at the case of



Davinder Pal Singh Bhullar (*supra*), wherein paragraph 107 the Hon'ble Supreme Court held as under:-

"It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim "Sublato fundamento cadit opus" meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case."

23. This Court has showed its anguish and disappointment with the working of the learned trial court which passed the simultaneous order for issuance of warrant, proclamation and attachment under Sections 73, 82 and 83 of the CrPC, respectively in a composite manner, and thus comes to finding that passing orders in such manner is bad in the eyes of law. However, considering the fact that it was a case in which five murders had been committed and this fact might have weighed upon the mind of the learned trial court while passing the orders, this Court would like to give the matter quietus and would refrain from recording any further observation.

24. Accordingly, both the writ petitions stand



disposed of.

25. Pending interlocutory applications are also
disposed of.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	AFR
CAV DATE	16.01.2026
Uploading Date	30.03.2026
Transmission Date	30.03.2026

