

(2024) 12 JH CK 0030
In the Jharkhand High Court
Case No : Cr.M.P. No.3329 Of 2024

Suresh Pd. Sharma @ Suresh Prasad Sharma

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 10-12-2024

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 528
Code of Criminal Procedure, 1973 — Section 82

Citation : (2024) 12 JH CK 0030

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Vijay Bahadur Singh, Sunil Kr. Dubey

Final Decision : Allowed

Judgement

Anil Kumar Choudhary, J

1. Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of BNSS, 2023 with twin prayers but the petitioner does not press the prayer to quash the order dated 04.01.2021 passed in Dhanwar P.S. Case No.171 of 2020. Accordingly, this prayer to quash the order dated 04.01.2021 passed by the learned Judicial Magistrate, 1st Class, Giridih in Dhanwar P.S. Case No.171 of 2020 rejected as not pressed.

3. The second prayer is to quash the order dated 20.07.2021 passed by the learned Judicial Magistrate, 1st Class, Giridih in Dhanwar P.S. Case No.171 of 2020. So far as the order dated 20.07.2021 passed by the learned Judicial Magistrate, 1st Class, Giridih in Dhanwar P.S. Case No.171 of 2020 is concerned, the learned counsel for the petitioner submits that the learned Judicial Magistrate, 1st Class, Giridih by the said order dated 20.07.2021 has directed issuance of the proclamation under Section 82 of Cr.P.C. without following the mandatory requirement of law by not fixing the time and place for appearance of

the petitioner and without recording its satisfaction that the petitioner is absconding or concealing himself to evade his arrest which is a sine qua non for issuing proclamation under Section 82 of Cr.P.C., hence, it is submitted that the said order dated 20.07.2021 passed by the learned Judicial Magistrate, 1st Class, Giridih in Dhanwar P.S. Case No.171 of 2020, be quashed and set aside.

4. Learned Addl.P.P. appearing for the State vehemently opposes the prayer made by the petitioner in this Cr.M.P. and submits that the very fact that the learned Judicial Magistrate, 1st Class, Giridih has issued the proclamation under Section 82 of Cr.P.C., implies that the petitioner was expected to appear before the court concerned within 30 days from the date of issuance of proclamation under Section 82 of Cr.P.C. Hence, it is submitted that this Criminal Miscellaneous Petition, being without any merit, be dismissed.

5. 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 by now it is a settled principle of law that the court which issues the proclamation under Section 82 of Cr.P.C. must record its satisfaction that the accused in respect of whom the proclamation under Section 82 of Cr.P.C. is made, is absconding or concealing himself to evade his arrest and in case the court decides to issue proclamation under Section 82 of Cr.P.C. it must mention the time and place for appearance of the petitioner in the order itself by which the proclamation under Section 82 of Cr.P.C. is issued.

6. Now, going through the order dated 20.07.2021 passed by the learned Judicial Magistrate, 1st Class, Giridih in Dhanwar P.S. Case No.171 of 2020, this court finds that the learned Judicial Magistrate, 1st Class, Giridih has neither recorded its satisfaction that the petitioner is absconding or concealing himself to evade his arrest nor fixed any time or place for appearance of the petitioner. Hence, this Court has no hesitation in holding that the learned Judicial Magistrate, 1st Class, Giridih has committed illegality by issuing the said proclamation under Section 82 of Cr.P.C. without complying with the mandatory requirements of law. Therefore, the same is not sustainable in law and the continuation of the same will amount to abuse of process of law and this is a fit case where the order dated 20.07.2021 passed by the learned Judicial Magistrate, 1st Class, Giridih passed in Dhanwar P.S. Case No.171 of 2020, be quashed and set aside.

7. Accordingly, the order dated 20.07.2021 passed by the learned Judicial Magistrate, 1st Class, Giridih passed in Dhanwar P.S. Case No.171 of 2020, is quashed and set aside.

8. The learned Judicial Magistrate, 1st Class, Giridih may pass a fresh order in accordance with law.

9. In the result, this Cr.M.P. stands allowed.