

**(2024) 10 JH CK 0066**

**Jharkhand High Court**

**Case No:** Criminal Miscellaneous Petition No.2896 Of 2024

Md. Salam Parwez @ Md. Salam  
Parwej @ Salam Parwej

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

**Date of Decision:** Oct. 15, 2024

**Acts Referred:**

- Bhartiya Nagarik Suraksha Sanhita, 2023 - Section 528
- Code of Criminal Procedure, 1973 - Section 82, 83

**Hon'ble Judges:** Anil Kumar Choudhary, J

**Bench:** Single Bench

**Advocate:** Praveen Shankar Dayal, Bhola Nath Ojha

**Final Decision:** Allowed

**Judgement**

Â Anil Kumar Choudhary, J

1. Heard the parties.Â Â Â

2. Though this Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of the Bhartiya Nagarik

Suraksha Sanhita, 2023 with several prayers but the learned counsel for the petitioner submits that the petitioner does not press the instant Cr.M.P. so

far as the prayer to quash the order dated 06.06.2017 passed by the learned Chief Judicial Magistrate, Dumka in connection with Dumka (T) P.S.

Case No.219 of 2013 corresponding to G.R. No.1603 of 2013, is concerned.

3. Accordingly, the prayer to quash the order dated 06.06.2017 passed by the learned Chief Judicial Magistrate, Dumka in connection with Dumka (T)

P.S. Case No.219 of 2013 corresponding to G.R. No.1603 of 2013 is rejected as not pressed.

4. Perusal of the record reveals that in this Cr.M.P., prayer has been made to quash the order dated 22.02.2018 by the learned Chief Judicial

Magistrate, Dumka in connection with Dumka (T) P.S. Case No.219 of 2013 corresponding to G.R. No.1603 of 2013 by which the proclamation

under Section 82 of Cr.P.C. has been issued against the petitioner and prayer has also been made to quash the orders dated 05.11.2019 and

20.01.2024 by which order for attachment of the property of the petitioner under Section 83 of Cr.P.C. has been passed by the learned Chief Judicial

Magistrate, Dumka in connection with Dumka (T) P.S. Case No.219 of 2013 corresponding to G.R. No.1603 of 2013.

5. Learned counsel for the petitioner submits that the proclamation under Section 82 of Cr.P.C. has been issued against the petitioner vide order dated

22.02.2018 without following the due process of law and without recording the 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. that too without fixing any time and place for his

appearance. It is next submitted that without any information available in the record that the proclamation under Section 82 Cr.P.C. was ever made,

the learned Chief Judicial Magistrate, Dumka, has issued order for attachment of the property of the petitioner under Section 83 of Cr.P.C. twice on

05.11.2019 and 20.01.2024 in connection with Dumka (T) P.S. Case No.219 of 2013 corresponding to G.R. No.1603 of 2013 which are also not

sustainable in law. Hence, it is submitted that the order dated 22.02.2018 by the learned Chief Judicial Magistrate, Dumka in connection with Dumka

(T) P.S. Case No.219 of 2013 corresponding to G.R. No.1603 of 2013 by which the proclamation under Section 82 of Cr.P.C. has been issued against

the petitioner and the orders dated 05.11.2019 and 20.01.2024 by which the attachment order of property of the petitioner under Section 83 of Cr.P.C.

has been issued by the learned Chief Judicial Magistrate, Dumka in connection with Dumka (T) P.S. Case No.219 of 2013 corresponding to G.R.

No.1603 of 2013, be quashed and set aside.

6. Learned Spl.P.P. appearing for the State vehemently opposes the prayer of the petitioner made in the instant Cr.M.P. and submits that the

petitioner has come belatedly with the aforesaid prayers. Learned Spl.P.P. further submits that the very fact that the learned Chief Judicial

Magistrate, Dumka has issued the proclamation under Section 82 of Cr.P.C. and the order of attachment under Section 83 of Cr.P.C. itself shows that

there were materials available in the record for the learned Chief Judicial Magistrate, Dumka to be satisfied that there is justification for issuance of

such proclamation and attachment order. Hence, it is submitted that this Cr.M.P., being without any merit, be dismissed.

7. 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. As already indicated above since the learned Chief Judicial

Magistrate, Dumka 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, therefore, this Court has no hesitation in holding that the learned Chief Judicial Magistrate, Dumka has

committed grave illegality by issuing the said proclamation under Section 82 of Cr.P.C. without complying with the mandatory requirements of law.

Hence, the same is not sustainable in law and the continuation of the same will amount to abuse of process of law. Therefore, this is a fit case where

the order dated 22.02.2018 passed by the learned Chief Judicial Magistrate, Dumka in connection with Dumka (T) P.S. Case No.219 of 2013

corresponding to G.R. No.1603 of 2013, being not in accordance with law; the continuation of the same will amount to abuse of process of law, hence,

the same is liable to be quashed and set aside.

8. Accordingly, the order dated 22.02.2018 passed by the learned Chief Judicial Magistrate, Dumka in connection with Dumka (T) P.S. Case No.219

of 2013 corresponding to G.R. No.1603 of 2013, is quashed and set aside.

9. So far as the orders dated 05.11.2019 and 20.01.2024 by which the attachment order under Section 83 of Cr.P.C. has been issued against the

petitioner by the learned Chief Judicial Magistrate, Dumka in connection with Dumka (T) P.S. Case No.219 of 2013 corresponding to G.R. No.1603

of 2013 are concerned, it is a settled principle of law that the court issuing proclamation under Section 82 of Cr.P.C. may for reasons to be recorded in

writing at any time after the issue of proclamation, order for attachment of any property movable or immovable or both belonging to the proclaimed

person. Now, in the absence of any material in the record to suggest that the proclamation under Section 82 of Cr.P.C. was in fact made in

accordance with law, certainly the learned Chief Judicial Magistrate, Dumka committed illegality by passing the order of attachment of property of the

petitioner without mentioning the description of the property to be attached and without recording any reason in writing about the need for passing

such order of attachment.

10. Hence, under such circumstances, this Court is of the considered view that the orders dated 05.11.2019 and 20.01.2024 by which the attachment

of the property under Section 83 of Cr.P.C. has been issued against the petitioner, by the learned Chief Judicial Magistrate, Dumka in connection with

Dumka (T) P.S. Case No.219 of 2013 corresponding to G.R. No.1603 of 2013 are also not in accordance with law and the continuation of the same

will amount to abuse of process of law. Therefore, this is a fit case where the orders dated 05.11.2019 and 20.01.2024 by which the attachment of

property under Section 83 of Cr.P.C. has been issued against the petitioner, by the learned Chief Judicial Magistrate, Dumka in connection with

Dumka (T) P.S. Case No.219 of 2013 corresponding to G.R. No.1603 of 2013, be quashed and set aside.

11. Accordingly, the orders dated 05.11.2019 and 20.01.2024 by which the attachment of property under Section 83 of Cr.P.C. has been issued

against the petitioner by the learned Chief Judicial Magistrate, Dumka in connection with Dumka (T) P.S. Case No.219 of 2013 corresponding to G.R.

No.1603 of 2013 are quashed and set aside.

12. The learned Chief Judicial Magistrate, Dumka may pass a fresh order in accordance with law.

13. In the result, this Cr.M.P. stands allowed to the aforesaid extent.