

**(2008) 11 PAT CK 0099**

**Patna High Court**

**Case No:** Criminal WJC No. 951 of 2008

Kanchan Kumar @ Kanchan  
Kumar Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision:** Nov. 11, 2008

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 82, 83
- Penal Code, 1860 (IPC) - Section 302, 34, 364

**Citation:** (2009) 2 PLJR 1039

**Hon'ble Judges:** Samarendra Pratap Singh, J

**Bench:** Single Bench

**Advocate:** Arun Kumar and Bipin Kumar, for the Appellant;

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### **Judgement**

@JUDGMENTTAG-ORDER

Samarendra Pratap Singh, J.

In the instant writ petition the petitioner seeks a direction to the respondent-Police to act fairly as he is being sought to be implicated as he bears a common name with that of the accused who is involved in Mufassil P.S. Case No. 324 of 2007 dated 12.10.2007 u/s 364/ 34 of the Penal Code to which section 302 of the Penal Code was added later. Learned counsel for the petitioner submits that though ten persons are named in the F.I.R. the petitioner is not named as an accused. In course of investigation the involvement of one Kanchan Rai son of Ram Prakash Rai of village Basudeopur came into picture. On the prayer of the police warrant of arrest was also issued against the aforesaid Kanchan Rai son of Ram Prakash Rai and even order of proclamation and attachment were sought for against him. He submits that the Investigating Officer has filed an application for issuance of proclamation and attachment against the petitioner whose first name is similar to of the accused Kanchan Rai. He submits that the petitioner is the son of one Sukumar Singh whereas

accused Kan Rai is son of one Ram Prakash Ram submits that issuance of proclamation and process of attachment is bad on two counts; firstly the proclamation u/s 82 Cr.P.C. and attachment u/s 83 Cr.P.C. cannot be issued straight away without issuance of warrant of arrest at the first instance and secondly the (sic) has been sought for by the police on the basis of mistaken identity.

2. Learned counsel for the State submits that in course of investigation the involvement of the petitioner has been found in the instant case.

3. It is well settled that process against any accused would be issued only in accordance with law. Merely because a person has been found an accused will not give a rope either to the police or to the court to act contrary to the provisions of law. The police could not have sought for proclamation u/s 82 Cr.P.C. and attachment u/s 83 Cr.P.C. and the court could not have passed the order for issuance of the same without issuing warrant of arrest at the first instance.

4. In this view of the matter, the issuance of proclamation and subsequent process of attachment is hereby set aside It would be open to the police to proceed against the petitioner or any one whom he thinks accused in accordance with law. I will be open to the petitioner to represent before the Investigation Officer, Sada Muffasil P.S., Begusarai that he is no the person involved in this case and he should not be proceeded against merely because his first name is similar to that of the accused Kanchan Rai son of Ran Prakash Rai.

5. With the aforesaid observations this writ petition stands disposed of. Let this order be communicate through fax at the cost of the petitioner.