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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 897/2004

Single Bench

PETITIONER

P. R. No. 880/04
Presented by Shri. R. K. Singh
dated 22.03.04

Sripati Singh,

S/o Late Nayan Singh,

Aged about 56 years,

R/o Belwatikar, Daltongunj,

District - Palamu, Jharkhand.

- Versus -

RESPONDENTS

1. State of Chhattisgarh, through
Secretary, Department of Home,
Mantralaya, Shastri Chowk,
Raipur (C.G.).
2. Superintendent of Police,
Bilaspur (C.G.)
3. Shri Abdul Rashid,
S/o Shri Abdul Hafij,
Aged about 51 years,
Proprietor M/s A. R. Trading
Company, near C.M.D. College,
Link Road, Bilaspur (C.G.)



WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN
THE NATURE OF MANDAMUS, PROHIBITION,
CERTIORARI ETC. OR ANY OTHER DIRECTION OR
ORDER TO DO JUSTICE IN THE MATTER.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 897/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p><u>24.12.2004</u></p> <p>On a mention being made, the matter is taken up for hearing.</p> <p>Shri Prashant Jaiswal, counsel for the petitioner.</p> <p>Smt. Fouzia Mirza, Panel Lawyer for the State.</p> <p>The petitioner has moved this writ petition under Article 226/227 of the Constitution of India with the prayer that respondent No.1 & 2 be directed to arrest respondent No.3, produce him before the Court of C.J.M., Daltangunj, Palamu (Jharkhand), declare him as absconding and attach his property.</p> <p>Brief facts leading to filing of this petition are that the petitioner herein filed a Complaint Case No.17/01 before the Chief Judicial Magistrate, Daltangunj, Palamu (Jharkhand) for commission of offence under Sections 419, 420 & 406 of Indian Penal Code against respondent No.3 herein. It appears that based on that complaint learned Magistrate took the cognizance of the aforesaid offences against respondent No.3 and summoned him to appear before the said court on 15.1.2001. However, on 16.2.2001 on the request of the complainant / petitioner herein warrant of arrest was directed to be issued to produce respondent No.3 before the said court on 5.3.2001 and vide order dated 20.2.2002 it was ordered that the matter be fixed on 12.3.2002 for order under Sections 82 & 83 of Cr.P.C.</p> <p>It appears that in the meantime, respondent herein moved anticipatory bail before the Court of Sessions Judge, Daltangunj, Palamu, but the same has been rejected by the said court vide</p>	

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>order dated 7.9.2001. Being dissatisfied with the said order, respondent No.3 moved anticipatory bail before the High Court of Jharkhand at Ranchi and vide order dated 10.10.2001 the High Court of Jharkhand directed respondent No.3 to surrender before the court below.</p> <p>As born-out from the records, the C.J.M., Daltongunj, Palamu sent a communication (Annexure P-4) addressed to the Officer In-charge, Bilaspur (C.G.) that a non-bailable warrant of arrest and process under Sections 82 & 83 of Cr.P.C. be issued against respondent No.3 and further directed the Officer In-charge that process under Sections 82 & 83 of Cr.P.C. be executed as early as possible.</p> <p>I have heard learned counsel for the petitioner on the question of admission.</p> <p>It has not been mentioned in this petition that to whom the warrant of arrest was handed over. In the first instance, communication (Annexure P-4) is not correctly addressed either to Station House Officer, Police Station where respondent No.3 herein is residing or to the District Superintendent of Police, Bilaspur. Moreover, Annexure P-4 is not in accordance with the provisions of Sections 82 & 83 of Cr.P.C.</p> <p>As per provisions of Sections 82 of Cr.P.C., <i>'if any Court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a</i></p>	

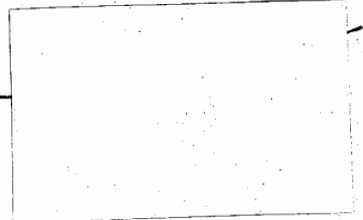
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मामला क्रमांक

सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p><i>specified time not less than thirty days from the date of publishing such proclamation'. Therefore, Section 82 of Cr.P.C. provides for issuance of proclamation. Section 83 of Cr.P.C. envisages that 'the Court issuing a proclamation under Section 82 may, for reasons to be recorded in writing, at any time after the issue of proclamation, order the attachment of any property, moveable or immovable or both, belonging to the proclaimed person'. Sub-section (2) of Section 83 further envisages that 'such order shall authorize the attachment of any property belonging to such person within the district in which it is made, and it shall authorize the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate'. Sub-section (4) further envisages that 'if the property ordered to be attached is immoveable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the District in which the land is situate'.</i></p> <p>Therefore, in order to meet the requirements of Section 83 in the first instance, the court concerned is required to ascertain the immoveable and movable properties of the proclaimed offender and thereafter, the order regarding attachment is to be passed by that court. Thereafter, the concerned District Magistrate or as per provisions of Section 83 the Police Officer is to be directed by the Chief Judicial Magistrate concerned to attach the property of the accused.</p>	



उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>Perusal of Annexure P-4 reveals that such procedure has not been adopted by learned Chief Judicial Magistrate. In the said communication the description of the property, which is to be attached in pursuance of the C.J.M. order, has not been mentioned. In view of the above reason, I do not find any substance in this writ petition.</p> <p>In the first instance, it has not been mentioned in the writ petition that to whom warrant of arrest has been sent and which is the officer who is not complying with the directions of the C.J.M. The relief sought for in Paragraph 7.3 cannot be granted by this Court, for that purpose the Court of Chief Judicial Magistrate concerned is competent to declare respondent No.3 as proclaimed offender and issue order for attachment of the property.</p> <p>In view of the foregoing discussion, I do not find any force in this writ petition, same is liable to be dismissed and it is, accordingly, dismissed.</p>	

Sd/-
L.C. Bhadoo
Judge