

31/01/2015

Shri R. K. Sharma, Advocate for the petitioner.

Shri R. S. Sharma, P.L. for the respondent/State.

Heard on admission.

By this petition u/S 482 of Cr.P.C. petitioner has challenged the order dated 06.12.2014 passed by the learned JMFC, Karera District shivpuri in relation to crime No. 528/2014 of police station Karera, District Shivpuri whereby proclamation u/S 82 and 83 of Cr.P.C was issued.

Briefly stated the matrix of the case are that crime No. 528/14 has been registered u/S 302, 147, 148, 149 of Cr.P.C. against the accused Suresh, Kadam Singh, Ramkumar, Bhagwan Singh, Kanchan and Anil Yadav in which it is alleged that on 07.10.2014 at about 2:30 AM complainant's brother Mangal Singh who was living in a hut near Yadav Chouka road was killed by the accused persons.

Present petitioners Bhagwan, Anil, Ramkumar and Kanchan are avoiding arrest. Accused Suresh and Kadam Singh were taken into custody. On filing an application by the Police Station Karera learned JMFC, Karera passed the impugned order on 06.12.2014 in which the properties of the accused persons are ordered to be attached u/S 83 Cr.P.C.

Learned counsel for the petitioner submits that without following the procedure provided in proviso of Section 83 of Cr.P.C., learned JMFC, Karera passed the impugned order. Therefore, the same is not proper in the eyes of law.

Plain reading of the proviso make it clear that the issue of proclamation should be adopted by the Court, when the Court is

satisfied by the affidavit or otherwise, that the person in relation to whom the proclamation is to be issued-

- (a) is about to disposed of the whole of any of the property or
- (b) is about to remove the whole or any part of his property from the local jurisdiction of the Court.

Without adverting to the details of the case on plain reading of the order dated 06.12.2014 it is evident that no affidavit or statement of the serving constable/head constable has been recorded. Thus non-compliance of the proviso of section 83 sub section (1) is observed.

Setting aside the order dated 06.12.2014, it is ordered that the learned JMFC, Karera, may issue the prescribed proclamation following the procedure as provided under Section 82 and 83 Cr.P.C.

With these directions this petition is disposed of.

C.c. as per rules.

(S. K. Palo)
Judge