

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 792 of 2024

Sanjay Pandey, aged about 58 years, son of late Shiv Kumar Pandey,
r/o Village+P.O.- Tutilawa, P.S.-Simariya, Dist.-Chatra, Jharkhand, Pin
Code- 825103

.... Petitioner

Versus

The State of Jharkhand

.... Opp. Party

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

.....

For the Petitioners	: Mr. Vishwanath Moon, Advocate
	: Ms. Shalini Saboo, Advocate
	: Mr. Rajesh Kr. Tiwari, Advocate
For the State	: Mr. P.D. Agrawal, Spl. P.P.

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By the Court:-

1. Heard the parties.
2. Though this criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with twin prayers to quash the orders dated 31.01.2024 and 05.03.2024 passed by the learned Special Judge, POCSO Act Cases, Chatra but the learned counsel for the petitioner do not press the prayer to quash the order dated 31.01.2024 by which non-bailable warrant of arrest was issued against the petitioner in connection with Simariya P.S. Case No. 07 of 2024 and confines his prayer to quash the order dated 05.03.2024 passed by the learned Special Judge, POCSO Act Cases, Chatra in connection with Simariya P.S. Case No. 07 of 2024

by which proclamation under Section 82 Cr.P.C. has been issued without complying the due procedure of law.

3. The brief fact of the case is that on 05.03.2024 the I.O. of the case filed an application in the court of learned Special Judge POCSO Act Cases, Chatra with a prayer for issue of the proclamation under Section 82 Cr.P.C. and upon such prayer being made, the learned Special Judge, POCSO Act Cases, Chatra issued the proclamation under Section 82 Cr.P.C.
4. It is submitted by the learned counsel for the petitioner that proclamation under Section 82 of Cr.P.C. has been issued vide order dated 05.03.2024 without fixing any time or place for the appearance of the petitioner who is the accused of the case; which is contrary to the settled principle of law. Hence, it is submitted that order dated 05.03.2024 passed by the learned Special Judge, POCSO Act Cases, Chatra in connection with Simariya P.S. Case No.07 of 2024 be quashed and set aside.
5. Learned Special Public Prosecutor on the other hand opposes the prayer for quashing the order dated 05.03.2024 passed by the learned Special Judge, POCSO Act Cases, Chatra in connection with Simariya P.S. Case No.07 of 2024 and submits that the very fact that the learned Special Judge, POCSO Act Cases, Chatra has issued the proclamation under Section 82 of Cr.P.C. itself shows that there were materials available in the record for the learned Special Judge, POCSO Act Cases, Chatra to be satisfied that there is justification for issuance of such proclamation. Hence, it is submitted that this

criminal miscellaneous petition being without any merit be dismissed.

6. Having heard the submissions made at the Bar and after going through the materials 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 accused persons of the case, in respect of whom the proclamation is issued, in the order itself, by which the proclamation under Section 82 of Cr.P.C. is issued. As already indicated above since the learned Special Judge, POCSO Act Cases, Chatra has not categorically recorded its satisfaction that the petitioner is absconding or concealing himself to evade his arrest but has only mentioned that it is likely that the petitioner may evade the process of law and has not fixed any time or place for appearance of the petitioner who is the accused person of this case, this Court has no hesitation in holding that the learned Special Judge, POCSO Act Cases, Chatra has committed gross illegality by issuing the said proclamation under Section 82 of Cr.P.C. without complying 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 and this is a fit case where the order dated 05.03.2024 passed by the learned Special Judge, POCSO Act Cases, Chatra in

connection with Simariya P.S. Case No.07 of 2024 be quashed and set aside.

7. Accordingly, the order dated 05.03.2024 passed by the learned Special Judge, POCSO Act Cases, Chatra in connection with Simariya P.S. Case No.07 of 2024, is quashed and set aside.
8. The learned Special Judge, POCSO Act Cases, Chatra may pass a fresh order in accordance with law.
9. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 3rd April, 2024
AFR/Sonu-Gunjan/-