

**THE HIGH COURT OF MADHYA PRADESH AT JABALPUR****(Single Bench - Rajendra Mahajan, J.)****M.Cr.C.No. 4264/2014**

Chhotan Prasad,  
Aged about 70 Years,  
S/o Late Shri Ramdhani Prasad  
R/o HIG-18 Old Subhash Nagar,  
Bhopal (M.P.).

**Petitioner.****V e r s u s**

State of Madhya Pradesh,  
Through S.H.O., Police Station,  
Piplani, Bhopal.

**Respondent.**

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**For Petitioner** : Shri Manish Datt, learned senior  
counsel with Shri Rajeev Mishra,  
learned counsel.  
**For Respondent:** Shri Yogendra Das Yadav, learned  
Panel Lawyer.  
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**O R D E R**

(Passed on the 17<sup>th</sup> Day of November, 2016)

By invoking the extra-ordinary jurisdiction of this court, the instant petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure 1973 (for short "Cr.P.C.") seeking relief of quashing the impugned orders dated 18.03.2011 and 12.09.2013 passed by the court of Judicial Magistrate First Class, Bhopal, in Crime No. 829/09 registered at Police Station Piplani Bhopal and order dated 20.12.2013 passed by the Special Judge, Bhopal in Criminal Revision No. 605/13 and releasing of his immovable properties from the attachment which are attached vide order dated 18.03.2011 under the

provision of Section 83 Cr.P.C.

**2.** The facts of the case in nutshell for adjudication of the petition are given below:-

(2.1) The police of Police Station Piplani, Bhopal registered a case at Crime No.829/09 against the petitioner and ten other accused persons for the offences punishable under Sections 364-A, 306 and 34 of the IPC. The police initiated the proceedings in the case against the petitioner and six other accused persons upon their abscondence under Section 82(1) Cr.P.C. before the court of Judicial Magistrate First Class, Bhopal (for short 'the court'). Thereupon, the court published a proclamation against the petitioner and the six other co-accused persons requiring them to appear before the court within the period specified in the proclamation. The petitioner did not appear before the court within the specified period. Thereupon, the court passed the order dated 18.03.2011 under Section 83 (1) Cr.P.C., whereby the court has attached the following house-property owned by the petitioner:-

"H.No.M-18, Old Subhash Nagar, Bhopal".

(2.2) It is pertinent to mention here that vide the order dated 18.03.2011, the court also attached the properties of some of

the absconding accused persons.

- (2.3) The petitioner and Smt. Rachna Kedia, who is the wife of absconding accused Vinay Kedia, filed separate written-objections before the court under the provision of Section 84 Cr.P.C. The petitioner took an objection that vide the order dated 18.03.2011, the court has only attached his property bearing description H.No.M-18, Old Subhash Nagar, Bhopal. But, the police has also attached a house of his ownership of the following description, H.No. Super Deluxe No.32, New Minal Residency, Bhopal. Therefore, the said property be released from the attachment. Vide the common order dated 16.09.2011, the court decided the objections raised by the petitioner and said Smt. Rachna Kedia. The court dismissed the petitioner's objections simply on the ground that as per the provision of Section 84(1) Cr.P.C. the petitioner has no right to raise the objections regarding the attachment as he has been declared "proclaimed person" by the court. Thereafter, on 01.10.2012 the petitioner filed another application under Section 85 (3) Cr.P.C. before the court for release of his attached properties on some other grounds. Vide the order dated

01.10.2012, the court dismissed his application simply on the ground that the further proceeding of the case is stayed by the High Court. Feeling aggrieved by the said order, the petitioner filed Criminal Revision No. 221/13. Vide the order dated 05.09.2013, the revisional court decided the revision. It is held in the said order that objector Smt. Rachna Kedia has filed the M.Cr.C. No. 3675/11 before the High Court, challenging the order dated 16.09.2011 passed by the court against her. The High Court has stayed the operation of the order dated 16.09.2011 to the extent it pertains to objector Smt. Rachna Kedia. Therefore, the High Court order has nothing to do with the petitioner's case. Upon the aforesaid findings, the revisional court directed the Court to decide the petitioner's application afresh. Thereafter, on 12.09.2013 the court heard *de novo* arguments upon the petitioner's application under Section 85(3) Cr.P.C., and the same day decided the application. The court dismissed the application on the grounds that it issued the proclamation on 10.01.2011, directing the petitioner to appear before the court by 22.02.2011. However, he appeared before

the court on 18.03.2011. Thus, he did not appear before the court within the specified period. Besides that, the application lacked of the grounds enumerated in Section 85 (3) Cr.P.C.

(2.4) Feeling aggrieved by the order dated 12.09.2013, the petitioner filed the criminal revision No. 605/13. Vide the order dated 20.12.2013, the revisional court affirmed the order dated 12.09.2013, dismissing the revision.

(2.5) Hence, this petition under Section 482 Cr.P.C.

**3.** Learned counsel appearing for the petitioner has submitted that on 18.03.2010 the petitioner filed M.Cr.C. No. 2604/10 before the High Court for grant of anticipatory bail under Section 438 Cr.P.C. in the case i.e. Crime No. 829/09 of Police Station Piplani Bhopal. After taking this court through the proceedings of various hearing-dates, he submitted that for one or the other reason the hearing on the application was adjourned time to time and that on 13.10.2011 it was finally disposed of as withdrawn. Thereafter, on 21.03.2012 the petitioner surrendered before the police in the case. Vide the order dated 13.05.2013 passed in M.Cr.C. No. 4828/13, the petitioner was granted bail by the High Court under Section 439 Cr.P.C. in the case. He submitted that the petitioner's anticipatory bail application remained pending before the High Court for a period between 18.03.2010 and

13.10.2011. This fact was in the knowledge of the police. But having concealed the aforesaid facts from the court, it initiated the proceedings against the petitioner under Section 82(1) Cr.P.C. Thus, the order dated 18.03.2011 passed by the court regarding attachment of the petitioner's property is against the law.

**4.** Learned counsel further submitted that as per the provision of Section 82(1) Cr.P.C., the time to be given for appearance of an absconding accused shall not be less than 30 days from the date of publishing of proclamation. However, the court granted less than 30 days' time for the appearance of the petitioner and other absconding accused persons. Hence, the proclamation is invalid. In support of this contention, he submitted that vide the order dated 10.01.2011, the court has also issued proclamation against absconding-accused Vinay Kedia. His wife Rachna Kedia filed Criminal Revision No.682/11 before the High Court, challenging the order dated 18.03.2011 passed by the court on the ground that the period of appearance of her husband Vinay Kedia is less than 30 days from the date of publication of the proclamation. The High Court disposed of the revision vide the order dated 19.11.2013 holding that the court has not given minimum 30 days' time for the appearance of Vinay Kedia before it from the date of publication of the proclamation. Consequently, the High Court set-aside the attachment order dated 18.03.2011 insofar as it relates to Vinay Kedia. He submitted that the same

principle is applied in the petitioner's case because the court has not only passed the common proclamation order but also the common attachment order dated 18.03.2011 against the petitioner, Vinay Kedia and some of other absconding accused persons. Hence, on the principle of parity the attachment order dated 18.03.2011 is against the law insofar as it relates to the petitioner either.

**5.** Learned counsel further submitted that vide the order dated 18.03.2011, the court has attached the property of the petitioner bearing description H.No. M-18, Old Subhash Nagar, Bhopal. However, the police has also attached his another house-property at H.No. Super Deluxe No. 32, New Minal Residency, Bhopal. Thus, the police has attached the said property having gone against the order dated 18.03.2011.

**6.** Learned counsel further submitted that the police initially filed a charge-sheet against the four accused persons in the case, who were arrested by it in the course of investigation. After the committal proceedings, Sessions Trial No.413/10 is registered. Later, it filed a supplementary charge-sheet in the case against the petitioner and two other absconding accused persons. The trial court at Bhopal held the trial of the case against all the seven accused persons framing charges against them for the offences punishable under Sections 306, 364-A r/w 120-B. Vide the judgment dated 08.10.2014, the trial court acquitted the petitioner and six other accused persons of all the charges framed against them. He submitted

that the objects of Sections 82 and 83 Cr.P.C. are to secure the presence of an absconding accused in the course of investigation of the case concerned and to bring him to justice. In the instant case, the petitioner surrendered before the police after dismissal of his anticipatory bail application and the aforestated court has acquitted him of all the charges framed against him. Therefore, the order dated 18.03.2011 has become redundant. Upon the aforesaid submissions, he prayed for quashing of all the impugned orders mentioned in para-1 of this order and releasing of the petitioner's properties from the attachment.

**7.** Learned Panel Lawyer has opposed the prayer and supported all the orders under challenge before this court.

**8.** I have considered the rival submissions made by the learned counsel for the parties across the Bar and perused the entire material on record.

**9.** The underlying objects of issuing proclamation and attaching of a property in terms of Sections 82 and 83 Cr.P.C. are to secure the presence of an absconding- accused in the course of investigation of the case concerned and bring such accused to justice. Section 84 Cr.P.C. provides for the procedure for raising objection(s) against the attachment-order by any person other than the proclaimed person. Section 85 Cr.P.C. provides for release, sale and restoration of an attached property. The language of Section 82 Cr.P.C. mandates that the jurisdictional court shall issue a proclamation against an accused only when it



has reason to believe that the accused against whom an arrest-warrant has been issued by it has absconded or is concealing himself so that the warrant cannot be executed. This means that the court shall issue the proclamation only after its objective satisfaction on the aforesaid point but not merely at the instance of the police concerned. It has to be seen in the case whether the court has satisfied itself before issuing the proclamation against the petitioner that he is absconding or concealing himself to avoid his arrest in the case? The record of M.Cr.C. No. 2604/10 reveals that on 18.03.2010 the petitioner filed an application for grant of anticipatory bail under Section 438 Cr.P.C. in the case. His application was admitted for final hearing on 26.03.2010 and the learned Panel Lawyer present at the time of hearing was directed to call for the concerned case diary. The record of the court reveals that the police had initiated proceedings under Section 82 Cr.P.C. against the petitioner in the year 2011. Thus, the police was in the know at the time of initiation of the proceedings that the petitioner's anticipatory bail in the case is pending before the High Court. Under the circumstances, the just and proper course to be followed by it was to get the petitioner's anticipatory bail decided on merits. However, the bail application was not decided on merits until it was withdrawn by the petitioner himself on 13.10.2011. If the petitioner had not appeared in a reasonable time before the police after the dismissal of his anticipatory bail then it should have initiated the proceedings

under Sections 82 and 83 Cr.P.C. But, the police had not followed the said course of action. From the perusal of entire proceedings of the court, it appears that the police had initiated the proceedings in the aforesaid Sections concealing the pendency of anticipatory bail application before the High Court. Moreover, it is evident that the court has issued the proclamation under Section 82(1) Cr.P.C. without satisfying itself that the petitioner has absconded or is concealing himself. In this view of the matter, it is crystal clear that the court had issued the proclamation against the petitioner without following in true sense the provision of Section 82 (1) Cr.P.C. Hence, it is held that the issuance of the proclamation and the order of attachment of the petitioner's properties are against the provisions of Sections 82 and 83 Cr.P.C.

**10.** As per the order dated 18.03.2011, the court has attached the petitioner's following property:-

“H.No.M-18, Old Subhash Nagar, Bhopal”.

But the record reveals that the police has also attached the petitioner's following property.

“H.No. Super Deluxe No.32, New Minal Residency, Bhopal.”

Thus, the police has attached the aforesaid property without the court order. Hence, the attachment of the aforesaid property is invalid, *ab initio*.

**11.** The court has dismissed the petitioner's application under Section 85 (3) Cr.P.C. vide the order

dated 12.09.2013 mainly on the ground that the court issued the proclamation against the petitioner on 10.01.2011 directing him to appear before it on 22.02.2011. But he appeared on 18.03.2011. As per the provision of Section 82(1) Cr.P.C. not less than 30 days are required to be given to an absconding-accused for the appearance before the court concerned from the date of publication of the proclamation but not from the date of order of issuance of the proclamation. The record reveals that the proclamation was published in the newspapers on 08.02.2011 whereby the petitioner was directed to appear before the court not later than 22.02.2011. Thus, the petitioner was not given minimum 30 days time for his appearance before the court. Therefore, it is held that the proclamation is vitiated for not granting mandatory time to the petitioner for his appearance before the court.

**12.** Section 85(3) Cr.P.C. provides that if an absconding-accused explains the concerned court after appearing before it within two years from the date of attachment-order, under what circumstances he had not appeared before it or the police as the case may be, then the court concerned may release his property from the attachment. The record reveals that the petitioner filed the application under Section 85(3) Cr.P.C. before the court on 01.10.2012 in which he has explained the non-compliance of the proclamation issued against him taking the ground of pendency of his anticipatory bail application in the case before the

High Court at the relevant time. The court has not considered the said ground while passing the order dated 12.09.2013, whereas the said ground would certainly bring the petitioner's application under the ambit of Section 85(3) Cr.P.C. Thus, the order dated 12.09.2013 passed by the court and the order dated 20.12.2013 passed by the revisional court, whereby the order dated 12.09.2013 is affirmed, are bad in law.

**13.** In the opinion of this court, the acquittal of the petitioner in the case vide the judgment dated 08.10.2014 passed in Sessions Trial No.413/10 is also an additional ground for the release of the petitioner's attached properties.

**14.** In view of the foregoing reasons, this petition is allowed and the impugned orders dated 18.03.2011, 12.09.2013 and 20.12.2013 are quashed and the following properties of the petitioner are released from the attachment.

(i) H.No.M-18 Old Subhash Nagar, Bhopal”.

(ii)H.No. Super Deluxe No.32, New Minal  
Residency, Bhopal.”

**15.** The court is directed to ensure the proper compliance of this order.

**16.** Accordingly, this petition is finally disposed of.

**(Rajendra Mahajan)**  
**Judge**

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