

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

MISC. CRIMINAL CASE No. 39110 of 2023

BETWEEN:-

1. SANJAY ASATI S/O HALKE PRASAD ASATI,
AGED ABOUT 48 YEARS,
OCCUPATION – GOVERNMENT TEACHER,
R/O VILLAGE GHUWARA, P.S. BHAGWA,
DISTT. CHHATARPUR (MADHYA PRADESH)
2. UPENDRA KHARE @ KALLU,
S/O RAMESH KHARE, AGED ABOUT 45 YEARS,
OCCUPATION – PRIVATE JOB,
R/O VILLAGE GHUWARA, P.S. BHAGWA,
DISTRICT CHHATARPUR (M.P.)

.....APPLICANTS

**(BY SHRI SURENDRA SINGH – SENIOR ADVOCATE WITH SHRI BRAHMA
NAND PANDEY - ADVOCATE)**

AND

1. STATE OF MADHYA PRADESH THROUGH
P.S. BHAGWA, DISTRICT CHHATARPUR (M.P.)
2. SATENDRA SINGH, S/O LATE SHRI SHAGUN SINGH,
AGED ABOUT 26 YEARS, THROUGH SHO, P.S.
BHAGWA, DISTT. CHHATARPUR (MADHYA PRADESH)

.....RESPONDENTS

**(BY SHRI MANOJ KUSHWAHA – PANEL LAWYER FOR RESPONDENT NO.1/
STATE.)**

Reserved on : 09.10.2023

Pronounced on : 26.10.2023

This petition having been heard and reserved for order, coming on for

pronouncement this day, the Court passed the following:-

ORDER

The petitioners, who are accused in FIR No.167/2023, registered at Police Station Bhagwa, District Chhatarpur, for commission of offence under Sections 306/34 of IPC, have assailed the issuance of proclamation order dated 7.8.2023 passed by the Judicial Magistrate First Class, Bada Malhara against them whereby they have been directed to appear before it on 25.8.2023, otherwise they would be declared as “proclaimed offender”.

2. Learned Senior counsel for the petitioners has contended that petitioners are accused in FIR No. 167/2023 registered at Police Station Bhagwa. They are absconding since the beginning of the investigation. Police moved an application before the learned Magistrate for issuing proclamation under Section 82 of Cr.P.C. Learned Magistrate after taking the case for hearing issued non bailable warrant and it was sent to the police for execution. The police made all possible efforts to apprehend the petitioners but in vain. At this, Police moved an application under Section 82 of Cr.P.C. and requested the trial Court to declare the petitioners as proclaimed offenders and by order dated 7.8.2023, the trial Court passed the order and issued proclamation that petitioners are required to appear before the Court to answer the said complaint on 25.8.2023. The petitioners aggrieved by the order passed in MJCR No.52/2023, have approached this Court by filing this petition.

3. Learned Senior Counsel for the petitioners by referring to Section 82 of Code of Criminal Procedure had submitted that an opportunity must be given to the person concerned for appearance before the Court within 30 days from the date of publication of

such proclamation but by order passed on 7.8.2023, the date of appearance was fixed as 25.8.2023. Thus, the time limit as stipulated in the Section has not been granted by learned Judicial Magistrate First Class and in such circumstances, the impugned order being erroneous is liable to be set aside.

4. On the other hand, learned counsel for the State has submitted that the petitioners are absconding since 5.7.2023 i.e. from the date of registration of the case. It is submitted that petitioners are still aware of the pendency of the case. Though 30 days' period as stated in Section 82 of Cr.P.C. has not been mentioned in the impugned order, even then the petitioners may appear before the Court within 30 days from the date of the order but they do not want to appear before the Court. Therefore, this petition has been filed on technical ground. It is submitted that there is no need to set aside the order passed by learned Magistrate.

5. Before dwelling with the rival submissions put forth by learned counsel for the parties, it would be proper to reproduce Section 82(1) of Code of Criminal Procedure :-

“82. Proclamation for person absconding.

(1) If any Court has reason to believe (whether after taking evidence or not) 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 specified time not less than thirty days from the date of publishing such proclamation. “

6. On a perusal of material available on record and having recorded the rival submissions put forth by learned counsel for the parties and the above said provisions, it

is *prima facie* apparent that the trial Court failed to pass the order inconsonance to the procedure prescribed in the Code. It is clear that learned Magistrate has passed the order with apparent error on the face of record and the aspect relating to 30 days time is totally absent. Therefore, it is apparent on the face of record that the procedure provided in Section 82 of Cr.P.C. has not been duly followed. In such circumstances, this Court has no other option but to set aside the order passed by the learned JMFC.

7. Consequently, the impugned order dated 7.8.2023 passed by learned Judicial Magistrate First Class, Bada Malhara, is set aside. Learned JMFC is directed to pass the order in accordance with law, if police files any fresh application seeking for issuance of fresh order of proclamation.

8. Petition is **disposed of** accordingly.

(DINESH KUMAR PALIWAL)
JUDGE