



# Care B4 Cure

Govt of Rajasthan:  
COOP - 2020 - Jaipur - 200402  
Niti Aayog: RJ/2020/0264925

# Latest Judgment

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Care B4 Cure / [@careb4cure@gmail.com](mailto:@careb4cure@gmail.com) /contact  
@ 9511585857/

CRLMC NO.4819 OF 2015

03.11.2015 learned counsel for the petitioners and learned Addl. Standing Counsel for the State.

2. The petitioners, being the accused persons in G.R. Case No.235/2004 of the court of learned S.D.J.M., Udala, has assailed the order dated 10.11.2005 passed by the said court issuing processes under Sections 82 and 83 of the Cr.P.C. declaring them as absconders and to attach their property, without specifying the property, to compel them for their appearance on 9.12.2003. The offences alleged in this case are 420/294/506/34 of the I.P.C.

3. Learned counsel for the petitioners drawing attention of this Court to the provisions of Sections 82 and 83 of the Cr.P.C. contends that the very basic requirements of Sections 82 and 83 of the Cr.P.C. have not been satisfied in this case and the order of the learned S.D.J.M., Udala is silent on that score. Bare reading of Section 82 of the Cr.P.C. reveals that 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. So in order to issue a proclamation under sub-section (1) of Section 82 of the Cr.P.C., the Court must be satisfied that a person against whom a warrant has been issued has absconded or is concealing himself so that such warrant cannot be executed, the Court may issue a proclamation under sub-section (1) of Section 82 of the Cr.P.C.

4. Now, in this case it is apparent from the record that the learned S.D.J.M., Udala has observed that the I.O. has prayed to issue processes under Sections 82 and 83 of the Cr.P.C. against the petitioners. He further observed that both are residents of village Garadihi, P.S.-Berhampur, District Balasore and as the accused persons are yet to be arrested though N.B.W. has been issued on 30.4.2005, in spite of several raids conducted by the I.O. and the accused persons are untraced. The learned S.D.J.M. was satisfied from the case diary that the O.I.C. has taken sincere steps to arrest the accused persons. Accordingly the learned S.D.J.M., Udala allowed the prayer. There is no finding by the learned S.D.J.M. that the persons have absconded or concealing themselves so that warrant cannot be executed. So the order issuing proclamation under sub-section (1) of Section 82 of the Cr.P.C. is not complied with.

5. Moreover, in order to issue an order of attachment of property of a person absconding under Section 83 of the Cr.P.C., the Court issuing a proclamation under Section 82 of the Cr.P.C., may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person, provided that the Court is satisfied that the person in relation to whom the proclamation is to be issued; (a) is about to dispose of the whole or any part of his property, or (b) is about to remove the whole or any part of his property from the local jurisdiction of the Court. Only on satisfaction of such condition, the Court may order the attachment simultaneously with the issue of the proclamation. The order passed by the learned S.D.J.M., Udala is cryptic one. No reasons have been given in the order. It is also not apparent from the record that an affidavit has not been filed to the effect that the proclamation is about to dispose or remove the whole or any part of his property belong to him, the order cannot be sustained.

It is well settled law of land that reason is the heartbeat of orders passed by the Court. Reasons always show the basis on which the learned Court came to a particular conclusion and absence of reasons in an order itself is violative of principles of natural justice.

6. In that view of the matter, the order dated 10.11.2005 passed by learned S.D.J.M., Udala, in G.R. Case No.235/2004 is hereby quashed. However, the Investigating Officer may file an appropriate application giving affidavit, so that the conditions laid down under Sections 82 and 83 of the Cr.P.C. shall be complied with. On such event, the learned S.D.J.M. shall apply his mind and dispose of the same by a reasoned order in the light of the observations made in the preceding paragraphs of the order.

7. The CRLMC is, accordingly, disposed of.

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S.K.Mishra, J.