

IN THE HIGH COURT OF JHARKHAND, RANCHI

Cr.M.P. No. 1855 of 2021

Ran Vijay Prasad, aged about 72 years, son of late R.Lal, resident of A-7/801, Olive Country, Sector-5, Vasundhara, PO and PS Ghaziabad, District –Ghaziabad, Uttar Pradesh Petitioner

-- Versus --

The State of Jharkhand

..... Opposite Party

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :- Ms. Lavanya Gadodia, Advocate

For the State :- Mrs. Priya Shrestha, Spl.PP

3/07.09.2021 Heard Ms. Lavanya Gadodia, the learned counsel appearing for the petitioner and Mrs. Priya Shrestha, the learned counsel appearing on behalf of the State.

2. This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. The petitioner has filed this petition for quashing the order dated 16.07.2021 passed by learned Judicial Magistrate, First Class, Madhupur, Deoghar whereby process under section 82 Cr.P.C was directed to be issued against the petitioner in connection with Sarath P.S.Case No.165 of 2012, corresponding to G.R.No.611 of 2012.

4. The learned counsel appearing for the petitioner submits that the petitioner was availing remedy under the Cr.P.C and he has filed the A.B.P. which was rejected vide order dated 28.06.2021 by the learned Sessions Judge, Deoghar. She further submits that the petitioner has moved before this Court in A.B.A No.4796 of 2021 which was withdrawn in view of the fact that in the meantime impugned order has been passed under section 82 Cr.P.C. By way of referring Annexure-3 at page-54 which is Aadhar Card of the petitioner she submits that the petitioner after retirement is residing in Gaziabad and he was a government servant and is aged about 72 years.

5. Mrs. Priya Shrestha, the learned State counsel submits that the petitioner had filed A.B.P and A.B.A petitions having knowledge of the pendency of the case and inspite of that the petitioner has not appeared in the Court.

6. On perusal of the order dated 16.07.2021, it transpires that

it is not the case of the petitioner that he has not availed the remedy under the law, the petitioner has moved in A.B.P which was rejected on 28.06.2021 and the petitioner has filed A.B.A which was permitted to be withdrawn in view of the fact that section 82 Cr.P.C order has been passed and after 82 order A.B.A was not maintainable and only on the application of the I.O. process under section 82 Cr.PC has been directed to be issued. There is no indication of time, place and date which has been held to be mandatory in terms of Para-23 of the judgment rendered in case of "*Md. Rustam Alam @ Rustam and Others v. The State of Jharkhand*", 2020 (2) JLJR 712.

7. Accordingly, impugned order dated 16.07.2021 passed by learned Judicial Magistrate, First Class, Madhupur, Deoghar in connection with Sarath P.S.Case No.165 of 2012, corresponding to G.R.No.611 of 2012 is quashed.

8. The matter is remitted back to the concerned court to proceed afresh strictly in terms of Cr.P.C.

9. Cr.M.P. No.1855 of 2021 stands disposed of.

(Sanjay Kumar Dwivedi, J)

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