

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 716 of 2020

Bholi Yadav @ Bholi Kumar Petitioner(s).
Versus
The State of Jharkhand ... Opp. Party(s).

CORAM : HON'BLE MR. JUSTICE ANANDA SEN.
Through: Video Conferencing

For the Petitioner(s) : Mr. Randhir Kumar, Petitioner.
For the State : Mr. Hardeo Pd. Singh, A.P.P.

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04/07.07.2020: The lawyers have no objection with regard to the proceeding, which has been held through video conferencing today at 10:30 A.M. They have no complaint in respect of the audio and video clarity and quality.

2. Heard the counsel for the parties.

3. By way of filing this petition, the petitioner has prayed for quashing the order dated 1.2.2020, by which, the learned CJM, Koderma, has issued a process under Section 82 Cr.P.C in connection with Koderma P.S. Case No. 171/2019.

4. Learned counsel for the petitioner submits that once the police went to the house of the petitioner but the petitioner was not found there and on that basis, it has been concluded that the petitioner is evading his arrest. He further submits that the petitioner filed an application praying therein to enlarge him on anticipatory bail and the said application was pending and at that time, the order impugned has been passed. He, relying upon the judgment/order passed by this Court in **Cr.M.P. No. 2722 of 2019 (Md. Rustum Alam @ Rustam Vs. The State of Jharkhand)**, submits that the order impugned has been passed without application of mind. He further submits that the procedure and requirements, which have been laid down in the section should be strictly followed while issuing the process under Sections 82 Cr.P.C, but the same has not been followed and thus the order impugned is absolutely bad.

5. Learned A.P.P submits that the police went to the house of the petitioner and the petitioner was found missing, thus the police had no alternative but to pray for issuance of process under Section 82 Cr.P.C against him.

6. In terms of Section 82(1) of the Cr.P.C, the court may publish a written proclamation requiring a person to appear at a specified place and at a specified time, not less than thirty days from the date of publishing such proclamation. This is a mandatory provision, which cannot be waived.

7. At this stage, I called for Form No. 4 of Schedule-II Cr.P.C from the court concerned electronically. The same has been sent before this Court electronically and a print copy of the same is kept on record. From perusal of the

said Form No. (4), I find that nowhere it has been mentioned as to where and when the petitioner has to appear. The columns in which the date and the place had to be filled up, are kept blank. This basic mandatory requirement has been left out by the Court below. This makes the entire process bad. Thus, I have no hesitation to hold that without application of mind and without complying the mandatory provision, the process under Section 82 Cr.P.C has been issued against the petitioner. This case is covered by the decision of this Court in Cr.M.P. No. 2722 of 2019 (Supra).

8. In view of the aforesaid facts, the impugned order dated 01.02.2020, by which, the process under Section 82 Cr.P.C has been issued, is **quashed** and **set aside**. The matter is remanded to the court below to pass an order afresh in accordance with law.

9. Accordingly, this petition is **allowed**.

10. The learned court below is directed to pass order afresh in accordance with the provisions of law.