

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.413 of 2025**

1. M/s. Shreem Construction, having its office at Ishakchak, Naya Chak, Near Bhudhia Kali Asthan, P.O. and P.S.- Ishak Chak, District Bhagalpur (Bihar) represented through Partner Hast Kamal Mishra, aged about 53 years, son of Bhabesha Mishra, Resident of Nayachak, Bhuriya Kali Asthan, Ishakchak, Jagdishpur P.O.- and P.S.- Ishakchak, District- Bhagalpur, State- Bihar

2. Hast Kamal Mishra, aged about 53 years, son of Bhabesha Mishra, Resident of Nayachak, Bhuriya Kali Sthan, Ishakchak, Jagdishpur P.O.- and P.S.- Jagdishpur, District- Bhagalpur, State- Bihar

... Petitioners

Versus

1. The State of Jharkhand

2. Sandip Ganguly, Son of Sri Kanhai Lal Ganguli (ITO) Office of ACIT, TDS Circle, Dhanbad, Aayakar Bhawan, Luby Circular Road, P.O. & P.S.- Dhanbad, Dist- Dhanbad, Jharkhand

... Opposite Parties

For the Petitioners : Mrs. Jasvindar Mazumdar, Advocate
Mr. Vijay Shanker Jha, Advocate,
Mr. Abhishek Sharan, Advocate

For the State : Mr. Shiv Shankar Kumar, Addl.P.P.

For the O.P. No.2 : Mr. Kumar Vaibhav, Sr. SC
Mr. Durgesh Agarwal, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of the Bharatiya Nagarik

Suraksha Sanhita, 2023 with several prayers but at the outset, learned counsel for the petitioners submits that the petitioners do not press the prayer to quash the entire criminal proceedings including the order dated 09.02.2018 passed in Economic Offence Case No. 03 of 2018 (C.O. No.03 of 2018) and the order dated 30.05.2023 by which the attachment order under Section 83 of Cr.P.C. has been issued, as till now, no property of the petitioner has been attached.

3. Accordingly, the prayer to quash the entire criminal proceedings of Economic Offence Case No. 03 of 2018 (C.O. No.03 of 2018) as well as the orders dated 09.02.2018 and 30.05.2023 passed by the learned Senior Judge Division-II-cum-Special Judge Economic Offence, Dhanbad, in the said case, are rejected as not pressed.

4. Learned counsel for the petitioner confines the prayers to quash the order dated 12.06.2018 passed in the said Economic Offence Case No. 03 of 2018 (C.O. No.03 of 2018) passed by the learned Senior Judge Division-II-cum-Special Judge Economic Offence, Dhanbad whereby bailable warrant of arrest has been issued against the petitioner without receiving the service report of the summons issued to the petitioners. Prayer has also been made to quash the order dated 19.01.2019 passed in the said Economic Offence Case No. 03 of 2018 (C.O. No.03 of 2018) passed by the learned Senior Judge Division-II-cum-Special Judge Economic Offence, Dhanbad by which non-bailable warrant of arrest has been issued without the execution report of the bailable warrant of arrest being received back by the court; and also to quash the order

dated 24.01.2020 passed in the said Economic Offence Case No. 03 of 2018 (C.O. No.03 of 2018) passed by the learned Senior Judge Division-II-cum-Special Judge Economic Offence, Dhanbad by which process under Section 82 of Cr.P.C. has been issued against the petitioners; who are the accused persons of the said case.

5. Learned counsel for the petitioners submits that the learned Senior Judge Division-II-cum-Special Judge Economic Offence, Dhanbad has committed a grave illegality by ordering for issue of bailable warrant of arrest against the petitioners when the service report of the summon issued to the petitioners was never received in the court concerned. Similarly, without receipt of the execution report of the bailable warrant of arrest, issuance of non-bailable warrant of arrest against the petitioners is also not sustainable in law. It is next submitted that without recording any satisfaction that the petitioners are absconding or concealing themselves to evade their arrest, the order of issuing the process under Section 82 of Cr.P.C. is also bad in law. Hence, it is submitted that the prayer, as prayed for in the instant Cr.M.P., be allowed.

6. Learned Addl. P. P. appearing for the State and the learned counsel for the opposite party No.2 on the other hand vehemently oppose the prayer of the petitioner made in the instant Cr.M.P. and submit that the very fact that the learned Special Judge has issued the bailable warrant, non-bailable of arrest and proclamation under Section 82 of Cr.P.C. itself goes to show that there were sufficient materials in

the record for the learned Special Judge to be satisfied for issuance of such processes. Hence, it is submitted that this Cr.M.P., being without any merit, be dismissed.

7. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that since the learned Special Judge vide order dated 09.02.2018 passed in the said Economic Offence Case No. 03 of 2018 (C.O. No.03 of 2018) has directed to issue summons to the petitioners so, without the service report of the summons issued, it ought not have directed for issuance of non-bailable warrant of arrest vide order dated 12.06.2018 passed in the said case, hence, this Court has no hesitation in holding that the order dated 12.06.2018 passed in the said Economic Offence Case No. 03 of 2018 (C.O. No.03 of 2018) by the learned Senior Judge Division-II-cum-Special Judge Economic Offence, Dhanbad is not sustainable in law.

8. Accordingly, the said order dated 12.06.2018 passed in the said Economic Offence Case No. 03 of 2018 (C.O. No.03 of 2018) by the learned Senior Judge Division-II-cum-Special Judge Economic Offence, Dhanbad is quashed and set aside *qua* the petitioners named above.

9. So far as the order dated 19.01.2019 passed in the said Economic Offence Case No. 03 of 2018 (C.O. No.03 of 2018) is concerned, since vide order dated 12.06.2018 the learned Senior Judge Division-II-cum-Special Judge Economic Offence, Dhanbad directed to issue bailable warrant of arrest, it ought to have ensured that the execution report of

the said non-bailable warrant of arrest is received back in the record, before passing of any order for issue of non-bailable warrant of arrest but having not done so and without any execution report of bailable warrant of arrest vide 19.01.2019 passed in the said case, the learned Special Judge having ordered for issuance of non-bailable warrant of arrest against the petitioners, the same is also not sustainable in law.

10. Accordingly, the order dated 19.01.2019 passed in the said Economic Offence Case No. 03 of 2018 (C.O. No.03 of 2018) by the learned Senior Judge Division-II-cum-Special Judge Economic Offence, Dhanbad is also quashed and set aside *qua* the petitioners named above.

11. So far as the order dated 24.01.2020 passed in the said Economic Offence Case No. 03 of 2018 (C.O. No.03 of 2018) by the learned Senior Judge Division-II-cum-Special Judge Economic Offence, Dhanbad is concerned, by now it is a settled principle of law that the court which issues the proclamation under Section 82 of Cr.P.C. must record its satisfaction that the accused in respect of whom the proclamation under Section 82 of Cr.P.C. is made, is absconding or concealing himself to evade his arrest and in case the court decides to issue proclamation under Section 82 of Cr.P.C. it must mention the time and place for appearance of the accused in the order itself by which the proclamation under Section 82 of Cr.P.C. is issued. As already indicated above since the learned Senior Judge Division-II-cum-Special Judge Economic Offence, Dhanbad has neither recorded its satisfaction that the petitioners are absconding or concealing themselves to evade their

arrest nor fixed any time and place for appearance of the petitioners, this Court has no hesitation in holding that the learned Senior Judge Division-II-cum-Special Judge Economic Offence, Dhanbad has committed a grave illegality by issuing the process under Section 82 of Cr.P.C. without complying the mandatory requirements of law. Hence, the same is not sustainable in law and the continuation of the same will amount to abuse of process of law and this is a fit case where the order dated 24.01.2020 passed in the said Economic Offence Case No. 03 of 2018 (C.O. No.03 of 2018) by the learned Senior Judge Division-II-cum-Special Judge Economic Offence, Dhanbad is also not sustainable in law.

12. Accordingly, the order dated 24.01.2020 passed in the said Economic Offence Case No. 03 of 2018 (C.O. No.03 of 2018) by the learned Senior Judge Division-II-cum-Special Judge Economic Offence, Dhanbad is also quashed and set aside *qua* the petitioners named above.

13. The learned Senior Judge Division-II-cum-Special Judge Economic Offence, Dhanbad may pass a fresh order in accordance with law.

14. This Criminal Miscellaneous Petition, is allowed to the aforesaid extent only.

(Anil Kumar Choudhary, J.)