

**Court No. - 71**

**Case :-** APPLICATION U/S 528 BNSS No. - 9806 of 2025

**Applicant :-** Devendra Singh

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** D.C. Dwivedi, R S Dubey, Shashi Dhar Dwivedi

**Counsel for Opposite Party :-** G.A.

**Hon'ble Raj Beer Singh, J.**

1. Heard learned counsel for the applicant and learned A.G.A. for the State.
2. This application under Section 528 Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as B.N.S.S.) has been preferred against the order dated 20.02.2025, passed by learned A.C.J.M.-7, Kanpur in Case No.395 of 2014 (Manorma Singh Vs. Devendra Singh), under Sections 452, 323, 504, 506, 427, 392 I.P.C., Police Station- Kalyanpur, District- Kanpur Nagar.
3. It has been submitted by learned counsel for the applicant that applicant has filed an application under Section 482 Cr.P.C. for quashing of the proceedings of aforesaid case vide Application under Section 482 Cr.P.C. No.1438 of 2016. In that application, further proceedings of the trial were stayed by this Court vide order dated 20.01.2016. However, on 29.05.2024 the said application under Section 482 Cr.P.C. was dismissed for want of prosecution. The applicant has moved an application for recalling of said order, which is pending. It is further submitted that by impugned order dated 20.02.2025 non-bailable warrants as well as process under Sections 82 & 83 Cr.P.C. has been issued simultaneously without recording any satisfaction. It was submitted that impugned order is against law and thus, liable to be quashed.
4. Learned A.G.A. has opposed the application and submitted that there is no illegality or perversity in the impugned order.
5. I have considered the rival submissions and perused the record.
6. Perusal of record shows that non-bailable warrants were being issued by the

trial Court against applicant. On 20.02.2025 the complainant has filed an application for issuance of process under Section 83 Cr.P.C. The trial Court has directed that non-bailable warrants as well as process under Section 82 & 83 Cr.P.C. be issued against applicant.

7. It is well-settled that in such cases when accused does not appear in the court after issuance of warrants, the process under sections 82 Cr.P.C. can be issued only when there is a report to this effect that he is absconding. After issuing proclamation under sections 82 Cr.P.C., the court has to wait for thirty days from the date of publication of proclamation, and then attachment under section 83 Cr.P.C. is to be issued. However, if the court is of the view that the accused is about to dispose of the whole or any part of his property or is about to remove the whole or any part of his property from the local jurisdiction of the court, the proclamation under section 82 Cr.P.C. and attachment u/s 83 Cr.P.C. can be issued simultaneously. In such a case, the court must be satisfied on the basis of the evidence produced before it that these circumstances exist and he has to mention these facts in the order for issuing processes under sections 82 and 83 Cr.P.C. simultaneously.

#### 8. Sections 82 Cr.P.C is reproduced as under:-

*"Section 82. Proclamation for person absconding.-(1) 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 specific place and at a specified time not less than thirty days from the date of publishing such proclamation.*

*(2) The proclamation shall be published as follows:-*

*(i)(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;*

*(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;*

*(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;*

*(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.*

*(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.*

*(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.*

*(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1)."*

9. At this stage, it would be pertinent to refer the case of **Indra Mani Pandey Vs. State of U.P.** (Application under Section 482 Cr.P.C. No.25200 of 2012), decided on 05.10.2012, this Court has held as under:-

*"The Code of Criminal Procedure has provided ample powers to execute a warrant. But if it remains unexecuted, there are two more remedies:- (i) issuing of a proclamation (Sec.82) (ii) attachment or sale of property (Sec.83). The sine qua non for an action under Section 82 is the prior issuance of warrant of arrest by the Court. There must be a report before the Magistrate that the person against whom the warrant was issued by him had absconded or had been concealing himself. Warrant of attachment will be preceded by an order of proclamation. The expression "reason to believe" occurring in Section 82 Cr.P.C. suggests that the Court must be subjectively satisfied that the person has absconded or has concealed himself or is avoiding the process of the court. Further, under Section 82 Cr.P.C. the Court issuing proclamation must record its satisfaction that accused had "absconded" or "concealed himself." The three clauses (a), (b), and (c) of sub-section (2) (i) of Section 82 Cr.P.C. are conjunctive and not disjunctive. The factum of valid publication depends on the satisfaction of each of these clauses. Clause (ii) of sub-section (2) is optional; it is not an alternative to clause (1). The latter clause is mandatory. The normal rule is that the Court has to wait until the expiry of 30 days, to enable the accused to appear in terms of the proclamation. Thus except in cases covered by the proviso to Section 82(1) the attachment order has to maintain a distance of not less than 30 days from the date of the publication under Section 82. Thus, proclamation issued under Section 82/83 Cr.P.C. by the trial court is against the mandatory provisions of law. It appears that the Magistrate was in undue haste and was bent upon to declare the applicant as proclaimed offender, without following the due process of law. Trial court has shown its ignorance in dealing with the issue."*

10. Applying the aforesaid law in the present matter, it is apparent that learned Magistrate has not recorded any satisfaction for issuance of process under Section 82 Cr.P.C. and much less for issuance of process under Sections 82 & 83 Cr.P.C. simultaneously. The learned Magistrate fell in grave legal error by issuing those processes simultaneously. Thus, the impugned order is perverse and against the provisions of law and therefore liable to be set aside.

11. In view of aforesaid impugned order dated 20.02.2025 is hereby set aside. The learned Magistrate shall pass order on the application of complainant afresh in accordance with law.

12. The application under Section 528 B.N.S.S. is **allowed** in above terms.

**Order Date :- 3.4.2025**

'SP'/-