

Legal Current affairs

Rajasthan High Court : Courts should not issue standing warrants, proclamations, or attachment orders unless they are satisfied that the accused is evading the law on purpose

Recently in the case of Bhavin Tanwar v. State of Rajasthan & Anr., The Rajasthan High Court has stated that courts should not issue standing warrants or commence actions under Sections 82 and 83 of unless they are satisfied that the accused is dodging or bypassing the orders to escape prosecution. Section 82 of the Code of Criminal Procedure deals with the proclamation of a person absconding, whereas Section 83 deals with the attachment of the absconding individual's property.

In essence, on May 16, 2012, the Special NIA Court issued a standing warrant against the petitioner, observing that the petitioner looks to be an absconder who has been evading the bailable warrant and that there is no way to secure his appearance in the near future. The trial court had ruled that he be prosecuted under sections 82 and 83 of the Code at the same time. The petitioner, who is enraged by this, has brought this case under Section 482 of the Criminal Procedure Code.

While granting the petition and overturning the trial court's decision, Justice Dinesh Mehta said,

"In the opinion of this Court, endeavor of a Court should be to ensure proper compliance of the statutory provisions and service of the summons as mandated by law. Service of summons is a bed-rock of principles of natural justice. The Courts should not rush to issue standing warrant and initiating proceedings under Sections 82 and 83 of the Code, unless they are satisfied that he accused is intentionally evading or circumventing the warrants in order to avoid the prosecution."

The trial court appears to have been misled by the Supreme Court's claimed directives to resolve Negotiable Instrument issues quickly, according to the court. The court went on to say that while it's important to have matters resolved quickly, it's also important to follow the law's mandates, especially procedural law. The trial court should not and cannot issue standing warrants and commence proceedings under Sections 82 and 83 of the Code as a matter of course or practise simply because bailable warrants have been ordered to be issued or have been issued in fact without report of their service/execution.

The court looked at sections 82 and 83, noting that taking action under section 82 is required before proceeding under section 83 of the Code. Section 82 gives the court the authority to issue a statement if the following conditions are met: first, the court has already issued a warrant, and second, the court has reason to believe that the person named in the warrant has absconded or hidden oneself in such a way that the warrant cannot be executed.

In connection to procedures under sections 82 and 83 of the Code, the court stated that it is built on the principles of fairness and equity, and that it cannot in good faith support the ruling of 16.05.2022. The court went on to say that declaring someone a "proclaimed offender" under Section 82 of the Code has serious repercussions, and that courts should proceed with caution before pursuing the suspect under Section 82 of the Code.

Furthermore, the court held that just stating that an accused has mysteriously vanished is inadequate to continue under section 82 of the Code because the phrase "such warrant cannot be executed" is used. The claimed absconding or concealment must be done in order to escape the warrant, according to the court.

Furthermore, the court stated that the phrase "such warrant cannot be executed" is critical since what needs to be established is that the accused is fleeing while being aware of the order. The court went on to say that without such a determination, it is impossible to say that the accused is attempting to avoid or evade the warrant.

The court added, "The trial Court has firstly, ignored the fact that on most of the occasions even the summons were not issued due to the fault of the office. That apart, during the period in question, entire society including the Government machinery remained standstilled due to spread of I and II wave of COVID. That apart, there was no material to infer let alone conclude that the petitioner has absconded; thirdly, the trial Court has not shown the basis on which it has concluded that the alleged absconding/concealment by the present petitioner was to avoid execution of the warrant."

To conclude, The court directed that the petitioner appear in front of the trial court on or before June 10, 2022, and submit a personal bond of Rs.1 lakh and two sureties of Rs.1 lakh each, following which the trial court will proceed in line with the law.

