

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 23rd May, 2013

+ **CRL.A. 391/2013**

MOHD JAMAL @ RANJHA Appellant
Through: Mohd. Irfan, Advocate.

versus

STATE Respondent
Through: Ms. Rajdipa Behura, Additional Public
Prosecutor for the State.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant is aggrieved by an order dated 20.02.2013 passed by the learned Additional Sessions Judge whereby although he was acquitted for the main offence, that is, under Section 307 IPC but he was convicted for the offence punishable under Section 174-A IPC as he was declared a proclaimed offender during the trial of the Sessions Case No.186/2010 which was instituted on 15.05.2009.
2. There is twofold contention raised on behalf of the Appellant. The firstly, that the process under Section 82 of the Criminal Procedure Code (the Code) was ordered to be issued against the Appellant by an order dated 15.02.2010 passed by the learned ASJ; the process was actually issued by the clerical staff on 02.03.2010 and actual publication was carried out by the process server on 08.03.2010 whereby the Appellant was required to appear before the Court on 27.03.2010. It is urged that as per Section 82

of the Code a period of at least 30 days is required to be given to a person against whom a proclamation has been issued (since the date of publication) to appear in the Court. Since in this case a period of just 19 days was given, the proclamation itself was illegal.

3. Second, that Section 174-A IPC was inserted by way of amendment by the Act of 25 of 2005 and became enforceable w.e.f. 23.06.2006. It is urged that the offence is triable by the Magistrate of First Class. Yet, in the instant case no challan/report under Section 173 Cr.P.C. was submitted before the Court of learned Metropolitan Magistrate, ('MM') rather the learned ASJ herself tried the Appellant for the offence punishable under Section 174-A as well in the case under Section 307/34 IPC and Section 25 of the Arms Act. It is urged that infact on Appellant's arrest in connected case he himself applied for issuance of the production warrant on 01.10.2012 but instead of acting on his request, a production warrant was issued at the request of the IO who effected his arrest under Section 41 (1) (c) of the Code. It is thus urged that the trial by the learned ASJ is illegal.
4. It may be noted that the Appellant was arrested or had surrendered in the connected case on 03.09.2012, that is, more than two years after the publication of the proclamation under Section 82 of the Code. It is not the Appellant's case that he put in an appearance before the Court concerned within 30 days or that he was incapacitated to appear before the Court immediately after 30 days of the date of publication of the proclamation. Thus, even if in pursuance of order dated 15.02.2010 for issuing proclamation against the Appellant, the proclamation was really published on 08.03.2010, the fact that he was required to appear on or

before 27th March losses significance. In order to show his bonafide and escape prosecution under Section 174-A IPC he could have appeared within 30 days of the publication. I am supported in this view by a judgment of a learned Single Judge of this Court in *Munnawar Hasan v. State of NCT of Delhi*, Crl.Rev. P. No.44/2013 decided on 30.04.2013.

5. I have before me the Trial Court record. Admittedly, the Appellant had surrendered in some other case on 03.09.2012; a request for interrogation and arrest of the Appellant was made by Head Constable Vijay Dutt to the learned ASJ on 03.10.2012 which permission was granted to him. The Appellant was consequently arrested under Section 41(1)(c) Cr.P.C. as he had been declared as a proclaimed offender. Thus, filing of the *kalandra* under Section 41(1)(c) was not a report under Section 173 Cr.P.C. prepared by the officer in charge of the Police Station. Thus, on the basis of the earlier said *Kalandra* under Section 41(1)(c) Cr.P.C. the Appellant could not have been tried for the offence punishable under Section 174-A IPC. All the more, it was only a 'MM' who was entitled to take cognizance and to try the offence under Section 174-A IPC. On the other hand, the Appellant was tried by the learned ASJ alongwith main case under Section 307/34 IPC and Section 25 of the Arms Act. The procedure adopted by the learned ASJ was totally illegal. A common judgment was passed by the learned ASJ whereby he was acquitted of the charges under Section 307/34 IPC and 25/27/54/59 of the Arms Act but was convicted under Section 174-A IPC.
6. Since the trial was illegal the impugned judgment convicting the Appellant under Section 174-A IPC is hereby set aside. However, this order shall be without prejudice to the right of the prosecution to file a

report under Section 173 Cr.P.C. against the Appellant before the learned
'MM' and to have a trial in accordance with law.

7. The Appeal stands disposed of in above terms.

(G.P. MITTAL)
JUDGE

MAY 23, 2013
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