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

+ W.P.(CRL) 2145/2016

AJAY KUMAR PANDEY Petitioner

Through: Mr.Pratap Singh Parmar, Adv.

versus

STATE Respondent

Through: Mr.Ashish Aggarwal, ASC with
Mr.Piyush Singhal, Adv.
ASI Gordhan Singh, P.S.Prashant
Vihar.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **05.05.2017**

The petitioner seeks quashing of FIR No.419/2016 dated 18.04.2016 (P.S.Prashant Vihar) instituted for the offence under Section 174A of the IPC in the following circumstances.

The petitioner was made an accused in FIR No.734/2015 dated 09.06.2015 instituted at police station Prashant Vihar for offences under Sections 420/120B and 34 of the IPC. It is submitted that the dispute was basically civil in nature but wrongly a criminal case was instituted.

In the aforesaid case, the petitioner could not appear before the Court on 25.01.2016 because of the death of his father on the same day. This fact was informed to his counsel with a request that an appropriate application may be moved before the Court for his exemption on the said date i.e.

25.01.2016. Since the Presiding Officer was not available, the case was adjourned to 27.01.2016. For the reason ascribed on behalf of the petitioner, the case was posted for 15.02.2016.

There was no communication to the petitioner regarding the next date (15.02.2016) in the case but he was only made to understand that he had to arrange money for paying to the complainant as was agreed under the settlement.

On 15.02.2016, because of non appearance of the petitioner, NBW of arrest was issued and a notice under Section 446 Cr.P.C was also issued to his surety, returnable on 10.03.2016.

It has been submitted on behalf of the petitioner that the NBW of arrest was issued for address at 61B, Bhagwati Garden Extension, Dwarka Mor, Uttam Nagar, Delhi, which is not the address of the petitioner. The petitioner actually resides at 64-B, Om Vihar, Phase 1A, Uttam Nagar, Delhi. As such the warrant could not be executed and the petitioner could not appear on 10.03.2016. On that date (10.03.2016), the trial Court initiated proceedings under Section 82 Cr.P.C and adjourned the case for 11.04.2016 for reply and arguments on an application filed by the complainant under Section 437(5) of Cr.P.C seeking cancellation of bail of the petitioner.

In the meantime, while the petitioner was still making attempts to garner finances, he was made accused in another FIR bearing No.1195/2015 at P.S.Karol Bagh in which the petitioner was granted anticipatory bail. It was at that stage that the petitioner came to learn about the proceedings having been initiated under Section 82 Cr.P.C in the case arising out of FIR No.734/2015, referred to above.

On 11.04.2016 the petitioner appeared before the trial Court and requested for dropping the proceedings under Section 82 Cr.P.C on the ground that NBW was issued on the wrong address. His application was rejected and he was sent to judicial custody. No written order for sending the petitioner to judicial custody could be passed as the printer was out of order and the lawyer of the petitioner was given the order of 11.04.2016 on 12.04.2016 at about 5.15 PM.

The trial Court, on 12.04.2016 passed another order dismissing the bail petition of the petitioner and directing the IO to register FIR against the petitioner under Section 174A of the IPC (subject FIR).

Learned counsel for the petitioner submits that the Court below has acted in a malafide manner. Despite the trial Court being made known of the fact that NBW of arrest was issued on a wrong address and despite the petitioner appearing before the Court on 11.04.2016, he was sent to judicial custody after rejecting his prayer for dropping of proceedings under Section 82 of the Code of Criminal Procedure.

A day later, not only the prayer for bail was rejected but a direction was issued to register FIR under Section 174A of the IPC.

Section 82 of the Code of Criminal Procedure deals with proclamation of an accused as an absconder. If any Court has reasons to believe that the accused against whom a warrant has been issued has absconded or is concealing himself so that the warrant may not be executed, such Court may publish a written proclamation requiring the accused to appear at a specified place and time, not less than 30 days from the date of publishing of such proclamation.

Sub section (2) of Section 82 of Cr.P.C describes as to how the proclamation under sub Section (1) of Section 82 would be published. Sub section (3) of Section 82 further specifies that a Court issuing the proclamation has to make a statement in writing that proclamation was duly published at a specified day in the manner specified in clause (i) of sub section (2) and only such statement would be conclusive evidence regarding the requirements of Section 82 having been complied with and that the proclamation was published on such day.

Section 174A of the IPC reads as hereunder:-

“174A. Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.—Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.”

The aforesaid provision was inserted in the IPC by Act 25 of 2005 with effect from 23.06.2006.

For application of Section 174A, the *sine qua non* as well as condition precedent is that there must be a proclamation under Section 82 of the Cr.P.C with respect to specified place and time for appearance of an accused within 30 days of the issuance of such proclamation.

The proceedings under Section 82 Cr.P.C were initiated on 10.03.2016 and 30th day thereafter would actually fall on 11.04.2016, on which date the petitioner appeared before the Court. In that view of the

matter, it has been submitted that the proceedings under Section 82 Cr.P.C therefore got terminated and there was no occasion for the Court to have directed for registration of FIR under Section 174A of the IPC. It has also been argued that there is no written statement of the Court below as required under sub section (3) of Section 82 Cr.P.C for establishing that the proclamation was duly published.

For attracting the provisions of Section 174A of the IPC, it is of absolute necessity that the summons to the accused must be served. In the present case, NBW of arrest could not be executed because of wrong address. The other requirement is that the non attendance/appearance of the accused must be intentional and for ascertaining whether it was intentional or not, the accused must be given an opportunity to explain. In the case in hand, there was no necessity of doing even that as the petitioner had appeared on the date fixed i.e. 11.04.2016.

The concerned Court has not acted with due care.

Thus the order dated 12.04.2016, directing the registration of the subject FIR against the petitioner is quashed.

Consequently, the subject FIR No.419/2016 dated 18.04.2016 (P.S.Prashant Vihar) instituted for the offence under Section 174A of the IPC and all the emanating proceedings therefrom are also quashed.

The least which could be said is that the Court below has definitely acted in haste and without observing the due process of law. Nothing more is being said here on the conduct of the concerned Court. This Court hopes and trusts that the concerned Presiding Officer shall be more careful in future while dispensing with justice.

The petition is allowed.

Let a copy of this order be communicated to the concerned Presiding Officer.

ASHUTOSH KUMAR, J

MAY 05, 2017
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