

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

% Judgment reserved on: 22<sup>nd</sup> March, 2018  
Judgment pronounced on: 31<sup>st</sup> July, 2018

+ CRL.REV.P. 223/2018

SANJAY BHANDARI ..... Petitioner

versus

STATE (NCT OF DELHI) ..... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr Kapil Sibal, Senior Advocate with Mr Manu Sharma, Mr Kabir Srivastava, Mr Adit Pujari, Mr Avneesh Arputham and Mr Abhir Datt, Advocates.

For the Respondents : Mr Akshai Malik, Addl. PP for the State.  
Insp Prem Chandra, Crime Branch.

**CORAM:-**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**SANJEEV SACHDEVA, J.**

1. The petitioner impugns order dated 08.01.2018 to the limited extent, the Trial court has declared the petitioner as a '*proclaimed offender*'.

2. The fulcrum of the challenge to the said order is based on the premise that the petitioner has not been accused of any of the offences mentioned in Section 82(4) of the Criminal procedure Code, 1973 (hereinafter referred to as Cr.P.C.) and, thus, it is contended that declaration of the petitioner as a *proclaimed offender* is unwarranted.

It is contended that even if the proceedings under Section 82(1) to 82(3) of Cr.P.C. is completed qua the petitioner, the petitioner could not be declared as a *proclaimed offender* as he is not accused of any offences mentioned under Section 82(4) Cr.P.C. Reliance is placed on the decision of the Rajasthan High Court in *Rishabh Sethi vs. State of Rajasthan*, judgment dated 08.03.2018 in S.B. CrI.Misc.(Petition) No.5767/2017.

3. Per contra, it is contended on behalf of the State that even though the petitioner may not have been accused of the offences mentioned in Section 82(4) Cr.P.C., the petitioner can still be declared as a *proclaimed offender* as the procedure contemplated in Section 82(1) to 82(3) has been complied with. It is contended that the term '*proclaimed offender*' can also be used in respect of individuals who are accused of offences other than those mentioned in Section 82(4) Cr.P.C, though consequences may be different. Reliance is placed on the decisions of the Punjab & Haryana High Court in CrI.Misc.No. No.30146/2011 titled *Rajiv vs. State of Haryana* dated 12.10.2011 and CrI.M.359/2012 titled *Deeksha Puri vs. State of Haryana, (2013) 1 RCR (CrI.) 159(2)* decided on 16.10.2012.

4. Petitioner is one of the accused in FIR No.173/2016, Police Station Parliament Street, under Section 3 and 5 of the Official Secrets Act, 1923. Subject FIR has been lodged on a complaint made by the Ministry of Defence. It is alleged in the FIR that intimation was

received by the Defence Secretary, Ministry of Defence from the Member, Central Board of Direct Taxes that the Investigation Wing of the Income Tax Department had come across photocopies of certain classified documents.

5. It is contended that search and seizure action under Section 132 of the Income Tax Act was carried out in the case of certain Companies as well as individuals as also the petitioner. From one of the premises certain documents seized *inter alia* contained photocopies of documents of Ministry of Defence marked '*secret and confidential*'. The secret and confidential documents recovered, pertained to defence related proposals as well as deliberations of Ministry of Defence. Consequent thereto, subject FIR was lodged.

6. The impugned order dated 08.01.2018 was passed on an application moved by the Investigating Officer in the subject FIR contending that the process under Section 82 had been executed against the accused petitioner. Proclamations were published in the newspaper Hindustan Times and Navbharat Times on 25.01.2017. Despite the same, the petitioner failed to appear before the Court even after a lapse of 30 days. The statement of the process server was recorded and the petitioner was declared as a *proclaimed offender* in the said case.

7. The question that arises of consideration is as to whether a person who is not accused of any of the offences mentioned in section

82(4) Cr.P.C. can be declared a *Proclaimed Offender*?

8. Section 82 of Cr.P.C. reads as under:

***“82. Proclamation for person absconding.***

*(1) If 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 specified 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 (45 of 1860), 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. Section 82(1) empowers a court to publish a written proclamation against a person, requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation. This proclamation is issued if the court has reason to believe that a person against whom a warrant has been issued by it, has absconded or is concealing himself so that such warrant cannot be executed. Further, it may be noticed that proclamation can be issued not only against a person, against whom a warrant has been issued and who has absconded but also against a person who is concealing himself so that such warrant cannot be executed.

10. Section 82(2) stipulates the manner and procedure of such proclamation. Section 83(3) stipulates that 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.

11. Section 82(4) and 82(5) were inserted by the 2005 amendment of the Code w.e.f. 23.06.2006. Section 82(4) stipulates that a person, in respect of whom a proclamation has been published under section 82(1), if he fails to appear at the specified place and time required by the proclamation and if he is accused of offences mentioned in Section 82(4), the court may pronounce him as a *proclaimed offender*, after making such inquiry as it things fit. Section 82(5) stipulates that the provisions of Section 82(2) and (3) shall apply to a declaration made by the court under section 82(4) as they apply to a proclamation made under 82(1).

12. Other than section 82(4), Section 82 does not stipulate the consequences of non-compliance of the proclamation issued under it. 82(4) stipulates that where the proclaimed person fails to appear at the specified place and time, the court may pronounce him as a *proclaimed offender*. This pronouncement as a *proclaimed offender* can only be issued if he is accused of the offences stipulated in 82(4)

and that also, only after the court has made such inquiry as it deems fit. There is no provision, other than section 82(4) in the Cr.P.C., under which the court can pronounce a person as a *proclaimed offender*.

13. There are adverse consequences stipulated in Cr.P.C. and Indian Penal Code qua a person in respect of whom a proclamation has been published under section 82, which shall be referred to a little later.

14. If the contention of learned Additional Public Prosecutor for the State were to be accepted – that every person in respect of whom a proclamation has been published is deemed to be a *proclaimed offender* irrespective of the provisions of Section 82(4) – then the consequence would be that a person qua whom a proclamation has been published and is not accused of any of the offences mentioned in Section 82(4), would be deemed so, without the safeguard of an inquiry stipulated in section 82(4). This can certainly not be the intention of the legislature. The offence enumerated in section 82(4) are serious in nature. It could not be the intention of the legislature that qua a person who is accused of offences that are serious in nature, the safe guard of an inquiry is stipulated and no such safeguard is stipulated qua a person who is accused of offences that may not be so serious.

15. The necessity of safeguard is further felt if one were to examine

the other stipulations contained in Cr.P.C. qua proclaimed offenders.

16. Section 40 Cr.P.C. *inter alia* stipulates that every officer employed in connection with the affairs of a village and every person residing in a village shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is nearer, any information which he may possess respecting the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or *proclaimed offender*. Section 40(2), stipulates that for the said section the expression '*proclaimed offender*' includes any person proclaimed as an offender by any Court or authority in any territory in India to which this Code does not extend, in respect of any act which if committed in the territories to which this Code extends, would be an offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, 302, 304, 382, 392 to 399 (both inclusive), 402, 435, 436, 449, 450 and 457 to 460 (both inclusive). Most of the sections of Indian Penal Code referred to in Section 40(2) and Section 82(4) are common.

17. Section 41 Cr.P.C. *inter alia* empowers every police officer to arrest any person who has been proclaimed as an offender either under the Cr.P.C or by order of the State Government, without an order from a Magistrate and without a warrant.

18. Section 43 Cr.P.C. *inter alia* empowers every private person to arrest or cause to be arrested any *proclaimed offender*.

19. Section 73 Cr.P.C. *inter alia* authorises the Chief Judicial Magistrate or a Magistrate of the first class to direct a warrant to any person within his local jurisdiction for the arrest of a *proclaimed offender* or of any person who is accused of a non-bailable offence and is evading arrest.

20. The stipulations contained in Sections 40, 41, 43 and 73 qua a proclaimed offender clearly shows that there are adverse consequences attached to being declared a proclaimed offender. The intention of the legislature cannot be that such adverse consequences would automatically get attracted to a person qua whom a proclamation has been published and is accused of offences of a less serious nature but for a person who is accused of serious offences enumerated in section 82(4), they would get attracted only after the safeguard stipulated in section 82(4) has been followed.

21. I am in respectful disagreement with the judgment of the Punjab and Haryana High Court in *Rajiv vs. State of Haryana* (supra) and *Deeksha Puri vs. State of Haryana* (supra).

22. The reasoning given by learned Judge in *Deeksha Puri* (supra) *inter alia* is that “Sub-section (4) of Section 82 Cr.P.C., if read, independent of the other sub-sections of Section 82 Cr.P.C. and

*provision of Section 174-A IPC and Section 174 IPC, is capable of being misconstrued to mean that it is only that accused person, facing trial, only for offences mentioned in Section 82 (4), who can be declared "proclaimed offender" after publication under Section 82 (1) (2) and (3) Cr.P.C. giving immunity to the other absconders from being declared "proclaimed offenders". In that imaginary situation, it appears to be a relaxation clause. But if sub-sections (4) and (5) of Section 82 Cr.P.C. are read alongwith sub-sections (1) and (2) of Section 82 Cr.P.C. and Scheme of other provisions of Cr.P.C. and Sections 174 and 174 A IPC, following the Rule of "Contextual construction", and "Harmonious Construction", it would avoid the risk of making interrelated provisions becoming otiose or devoid of meaning. The intention of legislation to make stringent penal provisions of Section 174 A IPC for securing the presence of an absconder by providing 7 years imprisonment for avoiding summons, warrants or proclamation, under Section 82 (1) Cr.P.C. can not be ignored while construing Section 82 (4) Cr.P.C. One can not negate the effect of Section 174-A IPC and render it redundant by misconstruing the Section 82 (4) Cr.P.C. to mean that it is meant to provide relaxation to offenders of offences not covered under Section 82 (4) Cr.P.C."*

23. The basic reasoning for the learned judge to hold that all persons qua whom a declaration has been published under section 82(1) Cr.P.C. would be deemed to be proclaimed offender is that any

other interpretation would render the provisions of section 174A IPC otiose and redundant.

24. In my view, learned judge has not noticed that the provisions of section 174 IPC and 174A IPC operate in different circumstances.

25. Sections 174 and 174A IPC read as under:

***“174. Non-attendance in obedience to an order from public servant*** —Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both, or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

***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.”*

26. Section 174 makes it an offence if a person being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart. Section 174 applies to all persons and public servants and is in respect of summons, notice, order or proclamation proceeding. Section 174 is not restricted only to accused but *inter alia* encompasses in its scope, witnesses, parties to civil and criminal proceedings, noticees to whom notice may have been issued by public authorities.

27. On the other hand section 174A makes it an offence if a person, required by a proclamation published under sub-section (1) of section 82, to appear, fails to appear. It further stipulates that if such a person fails to appear he would be punishable 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 section 82(4) against such a person, pronouncing him as a proclaimed offender, then he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

28. Under section 82 (1) Cr.P.C. a proclamation can be issued only

against a person against whom a warrant has been issued and has absconded or is concealing himself so that such warrant cannot be executed. Clearly, the scope and operation of sections 174 and 174A are different. However, there may be an overlap in their operation but largely they operate in different spheres. Persons covered by section 174A second part would be a sub set of persons covered by section 174A first part who in turn would be subset of persons covered by section 174 IPC.

29. Further it may be seen that sections 83, 84 and 85 Cr.P.C., which provide for attachment of property of person absconding, claims & objections thereto and release, sale and restoration of attached properties of persons qua whom a declaration under section 82 has been issued, uses the expression '*Proclaimed Person*'.

30. The provisions of Section 82 to 84 become applicable on the issuance of the proclamation and are not dependent on the declaration under section 82(4).

31. I am thus of the view that a person who is accused of offences other than the ones enumerated in section 82(4) and qua whom a proclamation has been published under section 82(1) would be a '*Proclaimed person*' and not a deemed '*Proclaimed Offender*'.

32. As noticed above, there is no provision other than section 82(4) for pronouncing such a person as a proclaimed offender and 82(4)

applies only in respect of persons accused of sections of IPC enumerated therein.

33. In view of the above, order dated 08.01.2018 declaring the petitioner as a *proclaimed offender* is not sustainable and is accordingly quashed to the said extent. However, this would not affect the status of the petitioner as a *proclaimed person* and would be without prejudice to the action initiated against the petitioner for failure to appear in terms of the proclamation issued.

34. The Petition is disposed of in the above terms.

35. Order *Dasti* under signatures of Court Master.

**JULY 31, 2018**  
**St/HJ**

**SANJEEV SACHDEVA J**