

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P.No.103 of 2019****Order reserved on: 09.01.2020****Order delivered on:24.01.2020**

Jeevan Lal Kamde son of Dukhuras, aged about 50 years,
resident of Village, Post, Police Station & Tahsil-
Chhuikhadan, District-Rajnandgaon (CG)

----- Petitioner**Versus**

Lochan Ram son of late Shri Siru Ram, Caste-Kumhar, aged
about 48 years, resident of Village-Newarikala, Police
Station & Tahsil-Balod, District-Balod (CG)

----- Respondent**Cr.M.P.No.263 of 2019**

Jeevan Lal Kamde son of Dukhuras, aged about 50 years,
resident of Village, Post, Police Station & Tahsil-
Chhuikhadan, District-Rajnandgaon (CG)

----- Petitioner**Versus**

Prabhuras Sonkar son of late Shri Manrakhan Sonkar, aged
about 54 years, resident of Village-Newarikala, Police
Station & Tahsil Balod, District-Balod (CG)

----- Respondent**And****Cr.M.P.No.2675 of 2019**

Jeevan Lal Kamde son of Dukhuras, aged about 50 years,
resident of Village, Post, Police Station & Tahsil-
Chhuikhadan, District-Rajnandgaon (CG)

----- Petitioner**Versus**

- 1.State of Chhattisgarh, Through Station House Officer,
Police Station Balod, District Balod, Chhattisgarh
- 2.Bhupath Singh Bhadiya, son of Awadh Ram, aged about
27 years, resident of Village Bhadiya Nawagaon,
Tehsil and District Balod, Chhattisgarh

----- Respondent

For Petitioner : Mr.Gautam Khetrapal and
Mr.Avinash Chand Sahu, Advocates
For Respondent : Mr.Pramod Shrivastava, Advocate
For Res.No.1/State : Mr.Ravi Bhagat, Dy.Govt.Advocate
in Cr.M.P.No.2675/2019

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Since common question of fact and law is involved in this batch of petitions, therefore, they were clubbed together, heard analogously and being decided by this common order.
2. Complainants-Lochan Ram Kumhar and Prabhuram Sonkar filed complaints under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called as 'NI Act') on 13.12.2017, in which summons, bailable warrant and non-bailable warrant were issued against the petitioner herein time to time, but process could not be served upon him and ultimately on 9.8.2018 the jurisdictional criminal Court issued proclamation against the petitioner under Section 82 (1) of the CrPC and also cautioned the petitioner that pursuant to the direction if he will not appear in future, his property would be attached under Section 83 of the CrPC and proceeding under Section 174A of the IPC shall be initiated against him. Thereafter, proclamation was published in Haribhumi newspaper on 9.8.2018 and finding that despite the proclamation is published, he failed to appear before the trial Court

he was declared absconded on 14.9.2018 under Section 299 of the CrPC and directed for registration of offence under Section 174A of the IPC against the petitioner, against which, the petitioner preferred revision before the revisional Court, which was also dismissed. Questioning that order, these batch of petitions have been filed.

3. Mr. Gautam Khetrapal, learned counsel for the petitioner, would submit that the trial Court as well as the revisional Court both are absolutely unjustified in holding that case against the petitioner for registration of offence under Section 174A of the IPC is made out. He would further submit that before issuance of proclamation under Section 82 (1) of the CrPC, he was not served bailable/non-bailable warrant and therefore, proceeding under Section 82 (1) of the CrPC is unnecessarily and therefore, in compliance of that, proceeding under Section 174A of the IPC has been directed to be initiated by lodging the FIR, which is totally uncalled for and unsustainable in law and is liable to be set aside. He relied upon the judgments of the Supreme Court in the matters of Inder Mohan Goswami and another v. State of Uttaranchal and others¹ and Raghuvansh Dewanchand Bhasin v. State of Maharashtra

¹ (2007) 12 SCC 1

and another².

4. On the other hand, Mr. Pramod Shrivastava, learned counsel for the respondent/complainant, would submit that the petitioner has failed to question the order dated 2.8.2018 by which proclamation under Section 82 (1) of the CrPC was issued and proclamation was directed to be published in the newspaper.
5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
6. The question for consideration would be, whether learned trial Magistrate is justified in directing for registration of offence under Section 174A of the IPC ?
7. In order to consider the aforesaid question, it would be appropriate to notice Section 174A of the IPC which states as under:-

"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."

8. The aforesaid offence under Section 174A of the IPC can be registered against accused person who fails to appear at the specific place and the specified time as required by a proclamation published under Section 82(1) of the CrPC and he is liable to be punished with imprisonment for a term which may extend to three years or with fine or with both for said offence.

9. Section 82 of the CrPC states 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) and (5) xxx xxx xxx."

- 10.** Reverting to the facts of the present case, in the instant case, against the petitioner, complaints under Section 138 of the NI Act were preferred by complainants- Lochan Ram Kumhar and Prabhuram Sonkar before the Chief Judicial Magistrate, Balod on 13.12.2017, which was ultimately registered on 12.2.2018 and thereafter time to time summons, bailable warrant and non-bailable warrant were issued to him, but he failed to appear before the trial Magistrate and as such, process could not be served upon him and ultimately on 2.8.2018 application for issuing proclamation was entertained and learned trial Magistrate declared him as a 'proclaimed person' under Section 82(1) of the CrPC and issued proclamation warrant against him to appear on 14.9.2018 before it and directed the Station House Officer, Police Station-Balod to publish the same on or before 9.8.2018 and submit a report. On 9.8.2018 the Station House Officer, Police Station-Balod submitted a report that said proclamation has been

published at the specified place and the specified time. In order to prove the said fact, the trial Magistrate on 9.8.2018 directed to examine Assistant Sub-Inspector Devkumar Korram on 14.9.2018 and on 14.9.2018 he was examined and copy of newspaper 'Haribhumi' dated 9.8.2018 in which proclamation was published was also filed and thereafter he was declared to be 'proclaimed person' and consequently he was declared absconded under Section 299 of the CrPC and ultimately, the trial Court by order dated 14.9.2018 finding that the petitioner has not appeared before it directed for registration of offence under Section 174A of the IPC, against which, the petitioner preferred revision before the revisional Court questioning the order dated 14.9.2018, in which the revisional Court has held that the requirement for offence under Section 174A of the IPC is duly made out as the petitioner failed to appear before the trial Magistrate at the specific place and the specified time as required under under Section 82(1) of the CrPC and accordingly dismissed the revision. The procedure followed by the learned Magistrate in directing registration of offence under Section 174A of the IPC is in accordance with law. It is neither perverse nor contrary to record.

11. Submission of learned counsel for the petitioner that no summons, no bailable warrant and non-bailable warrant were issued to him prior to issuance of proclamation, therefore, order directing registration of offence under Section 174A of the IPC deserves to be noticed only for rejection. There is no condition precedent either for issuance of proclamation under sub-section (1) of Section 82 of the CrPC or for directing registration of offence under Section 174A of the IPC as the petitioner was regularly avoiding process of the Court issued time to time, as such, the trial Court is absolutely justified in directing for registration of offence under Section 174A of the IPC after following the due process as the petitioner has failed to appear at the specified place and the specified time before the Court of Chief Judicial Magistrate, Balod on 14.9.2018 and as such, the trial Court rightly directed for registration of offence under Section 174A of the IPC against the petitioner. I do not find any illegality in the said order.

12. In view of above, the facts of the decisions cited by learned counsel for the petitioner are clearly distinguishable to the facts of the present case.

13. Accordingly, the aforesaid CrMP's filed by the

petitioner are liable to be and are hereby dismissed.

Sd/-

(Sanjay K.Agrawal)

Judge

B/-