

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPLICATION NO.560 OF 2021

Rammi Paramjeetsingh Rajput,
Age: 40 years, Occu:Business,
R/at: D-9, Tulsi Apartment,
Panchvati, Sita Gumphra Road,
Nashik – 422 003

...Applicant
(Org.Accused No.14)

Versus

1. The State of Maharashtra
(Through Gangapur Police Station,
Nashik City)
2. Commissioner of Police,
Office of the Commissioner of Police
Nashik City, Gangapur Road,
Opposite K.T.H.M. College,
Police Staff Colony, Nashik-422 002
3. Asst. Commissioner of Police
Investigating Officer Mr. Samir Shaikh
Unit-4, Nashik City, Gangapur Road,
Opposite K.T.H.M. College,
Police Staff Colony, Nashik-422 002

...Respondents

Mr. Hrishikesh Mundargi i/b Mr. Varun Thokal for the Applicant

Mr. A. R. Patil, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 4th AUGUST 2021

JUDGMENT :

1 Heard learned counsel for the parties.

2 Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned APP waives service on behalf of respondent–State.

3 By this application, the applicant seeks quashing and setting-aside of the order dated 6th July 2021 passed by the learned Special Court, Nashik, issuing proclamation as against the applicant under Section 82 of the Code of Criminal Procedure (`Cr.P.C`).

4 Learned counsel for the applicant states that the order issuing proclamation cannot be sustained, inasmuch as, the learned Judge has not complied with the requirement of Section 82 of Cr.P.C, whilst issuing proclamation i.e. no clear notice of 30 days has been given as contemplated under Section 82(1) Cr.P.C. Learned counsel relied on the judgments in the cases of *Umesh Gajanan Tapase & Ors. v. The State of Maharashtra*¹; *Gurappa Gugal & Ors v. The State of Mysore*²; *Shokat Ali v. State of*

1 Cri.WP/3143/2018 dated 22/12/2018

2 1968 Indian Law Reports 556

Haryana & Anr.³; Sandip Shankarlal Kedia v. The State of Maharashtra & Anr.⁴; Roopali @ Ruby v. State of Haryana⁵;

5 Learned A.P.P does not dispute the fact that 30 clear days were not given as contemplated under Section 82 Cr.P.C. Learned A.P.P also does not dispute that the order dated 6th July 2021 was served on applicant's relative on 13th July 2021.

6 Perused the papers. The applicant is arraigned as original accused No. 14 in C.R. No. 37/2021 lodged with the Gangapur Police Station, Nashik for the alleged offences punishable under Sections 302, 115, 120B, 201 r/w 34 of the Indian Penal Code and under Sections 4 and 25 of the Arms Act. It appears that subsequently, Sections 3(1)(i)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act were added.

7 It is a matter of record that vide order dated 6th July 2021, the learned Sessions Judge, Nashik issued proclamation under Section 82(1) Cr.P.C as against the applicant, as he was absconding. The said order is at page 153 of the application. Vide the said order, the applicant was required

3 CRM-M-64796-2018 (O&M) dated 18/12/2019

4 Cri.WP/3209/2014 dated 1/12/2014

5 CRM-M-33148-2017 dated 7/9/2017

to appear before the District Judge-I and Additional Sessions Judge, Nashik on 3rd August 2021, to answer the complaint (i.e. C.R. No. 37/2021, Gangapur Police Station, Nashik). Admittedly, the said order dated 6th July 2021 was served on the applicant's relative on 13th July 2021. Admittedly, there is no mention of 30 days in the order dated 6th July 2021 requiring the applicant to appear within not less than 30 days from the date of publication of proclamation, as mandated by Section 82(1) Cr.P.C. Section 82 Cr.P.C is reproduced hereinunder :

“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.”
(emphasis supplied)

8 Sub-section (1) of Section 82 makes it clear that the proclamation has to be published in accordance with sub-section (2) of Section 82 and that the accused is supposed to appear at a specified place and at a specified time, within not less than 30 days from the date of publishing such proclamation. Thus, Section 82 mandates that a clear period of 30 days is required to be afforded to an absconding accused to cause appearance after publication is effected.

9 According to the learned A.P.P, the proclamation was served on the applicant's relative on 13th July 2021. The impugned order mentions that the applicant has to appear on 3rd August 2021. Section 82 Cr. P.C. makes it obligatory to give an absconding accused 30 days time for his appearance, from the date of publication of the proclamation. Thus, the

order passed by the learned Special Judge, Nashik, issuing proclamation cannot be sustained for the aforesaid reasons.

10 Accordingly, the impugned order dated 6th July 2021 passed by the learned Special Judge, Nashik, issuing proclamation is quashed and set-aside.

11 The learned Judge, if he deems fit, is always at liberty to issue fresh proclamation in accordance with the mandate of Section 82 Cr.P.C.

12 Rule is made absolute in terms of prayer clause (c).

13 Application is allowed and disposed of on the aforesaid terms.

14 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.