

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.6722 OF 2021

Shabib Gulam Dastagir Patel] Petitioner

Vs.

**The State of Maharashtra]
At the instance of Shantinagar]
Police Station, Bhiwandi, Thane.] Respondent**

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Mr. Ali Bubere a/w Mr. Umar Dalvi, for Petitioner.

Mr. S.S. Hulke, A.P.P, for Respondent-State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

**DATE : 29TH DECEMBER, 2021.
[Vacation Court]**

P.C.

1. Heard.
2. The petitioner has invoked supervisory jurisdiction of this Court under Article 227 of the Constitution of India.
3. The main contention of the learned Counsel for the petitioner is that an order of proclamation passed by the learned

J.M.F.C, under section 82 of the Code of Criminal Procedure is without any reason. Section 82 of the 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, 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)]”.

4. The learned Magistrate has directed issuance of proclamation against the petitioner in view of the report submitted by the concerned Police Station. A bare look at the report reveals that the petitioner has committed an offence punishable under sections 420, 406, 409, 467, 468, 471, 477-A r/w 34 of the Indian Penal Code. The amount involved in this case of cheating is to the tune of Rs.1,04,97,000/-. The report also reveals that despite issuance of warrants and warning by the Court to remain present, the petitioner remained absent without any justifiable reason.

5. The Court has rightly cancelled bail granted to the petitioner and issued Non Bailable Warrant, *inter alia*, proclamation under section 82 of the Cr. P.C. The crime is being investigated by the Economic Offences Wing of the Crime Branch. The report further reveals that the petitioner had also preferred one more Petition for quashing an F.I.R.

6. From the overall report, it appears that the learned J.M.F.C had rightly issued the proclamation. The order needs no interference under Article 227 of the Constitution of India. Hence, Petition stands dismissed.

[PRITHVIRAJ K. CHAVAN, J.]