

4. Learned Counsel for the petitioner states that the petitioner was arrested in connection with C.R.No. 387 of 1994 registered with the Vakola Police Station for the alleged offence punishable under Section 326 of the Indian Penal Code, and thereafter, was released on bail on 16th May, 2009. He submits that since the registration of the said case, the petitioner is residing at the address mentioned in the cause title of the petition i.e. for the last 30 years, and that the said address is also on the record of the trial Court. He submits, that not a single warrant/summons was served on the petitioner at the said address. He submits that the learned Judge, without verifying whether any warrant which was issued was served on the petitioner or not, issued proclamation under Section 82 of the Criminal Procedure Code ('Cr.P.C.' for short) and by the very same order also issued an attachment warrant. Learned Counsel for the petitioner submits that in para 15 of this petition, the petitioner has undertaken to remain present before the learned Metropolitan Magistrate on all dates of hearing, without fail and also undertaken to co-operate in the conduct of the case, by not seeking any time.

5. Learned APP does not dispute the fact, that the Police had not submitted any report to the trial Court, whether the warrant issued as

against the petitioner, was served on the petitioner or not. He also does not dispute the fact, that an order of attachment of property could not have been passed without first complying with Section 82 of the Cr.P.C.

6. Perused the papers. As noted above, the petitioner was arrested on 20th October, 2007 in connection with C.R.No. 387 of 1994 registered with the Vakola Police Station, for the alleged offence punishable under Section 326 of the Indian Penal Code. Thereafter, the petitioner was released on bail on 16th May, 2009. It appears that as the petitioner failed to appear before the Court, NBW was issued as against him. It is a matter on record that on 3rd October, 2009, an NBW was issued as against the petitioner and the same was cancelled by the trial Court on 11th January, 2010. It is the petitioner's case that thereafter he was regularly attending the Court of learned Metropolitan Magistrate. On 9th November, 2010, again an NBW was issued as against the petitioner. It is the petitioner's case that when he learnt of the same, he visited the 32nd Court, however, he was informed that the complaint/case was transferred to the 21st Court and that he should attend the said Court after receiving notice of hearing from the said Court. According to the petitioner, thereafter, neither did he receive any notice nor any NBW, and that only in February, 2022, he learnt that a proclamation notice was pasted on a conspicuous part of his

residence; and also learnt of the two orders dated 9th June, 2016 and 29th February, 2020. According to the learned Counsel for the petitioner, no notice nor any NBW was served on him, though he was residing at the same address for about 30 years. Learned Counsel relied on the Election Card issued by the Election Commission of India, Aadhar Card, Driving License, Electricity Bill, Bank Passbook, Gas Connection, in support of his case that he was residing in the address as stated in the cause title of the petition.

7. From the impugned order dated 9th June, 2016, it appears that the learned Judge, without waiting for the police report, with respect to the warrant issued, proceeded to issue proclamation under Section 82 of the Cr.P.C. as well as an attachment warrant vide order dated 9th June, 2016. Infact, in the very same order, issuing proclamation, an order of attachment was passed, contrary to law.

8. Be that as it may, apart from the aforesaid, the petitioner has undertaken to appear before the trial Court on every date; not seek any adjournment, except in exceptional circumstances; and to co-operate in the conduct of trial.

9. Considering the same, the petition is allowed and the impugned orders dated 9th June, 2016 and 29th February, 2020 passed by the learned Metropolitan Magistrate, 71st Court, Bandra, Mumbai below Exhibit – 1 in C.C.No. 1282/PW/2017 are quashed and set aside.

10. The petitioner to file an affidavit-cum-undertaking in the trial Court within two weeks from the date of uploading of this order, undertaking therein to appear before the trial Court on every date except in exceptional circumstances. The applicant shall also undertake that he will not seek any adjournment, except in exceptional circumstances and that he will co-operate in the expeditious disposal of the case which is pending since 2007.

11. Rule is made absolute on the aforesaid terms and the petition is accordingly disposed of.

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

REVATI MOHITE DERE, J.