

3. Learned Counsel for the applicant submits that the applicant is identically placed as co-accused – Vinay Ramnarayan Singh @Bablu and is also covered by the order dated 1st December 2021 passed by this Court (Coram: Sandeep K. Shinde, J.) in Criminal Writ Petition No.4551 of 2021. Learned Counsel for the applicant relied on para 11 of the said order, in support of his submission.

4. Mr. Jagtap, learned Special Public Prosecutor for the respondent – State, does not dispute the fact that para 11 of the order passed by this Court dated 1st December 2021 will also cover the applicant in the present case. He submits that although the said order dated 1st December 2021 has not been challenged by the prosecution, the prosecution has taken further steps pursuant to the said order dated 1st December 2021. Mr. Jagtap has tendered an affidavit in reply on behalf of D.C.B, CID Unit – XI. The same is taken on record.

5. Perused the papers in particular the order dated 1st December 2021 passed by this Court (Coram: Sandeep K. Shinde, J.). Vide order dated 17th November 2021, the learned Additional Chief Metropolitan

Magistrate, 37th Court, Esplanade, Mumbai had allowed the application of the Investigating Officer for issuance of proclamation. Accordingly, proclamation came to be issued as against the applicant as well as the other two co-accused including Vinay @Bablu. It is not in dispute that Vinay @Bablu filed a writ petition in this Court being Writ Petition No.4551 of 2021 challenging the very same order as challenged by the applicant in the present application i.e. the order dated 17th November 2021 issuing proclamation *qua* him. This Court whilst allowing the writ petition preferred by Vinay @Bablu observed in paras 8 to 11 as under:-

8. *Yet, since Section 82 is a penal clause making the accused susceptible to punishment under Section 174A of the Indian Penal Code, the procedure enacted under Section 82 is to be strictly followed and it cannot be relaxed. It is settled law that, where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. In the case of **Auto Cars V/s. Trimurti Cargo Movers Pvt. Ltd. And Ors., (2018) 15 SCC 166**, the Apex Court has held that, non-compliance with the statutory requirements regarding mentioning of specific “day, date, year or time” would amount to material infirmity rendering summons, as well as, their service bad in law and consequently it cannot be held to be duly served.*

9. *In the case in hand, Section 82 of the Criminal Procedure Code, mandates that the period specified in the proclamation, requiring a person to appear at a specified place and time, shall ‘not be less than thirty days’. As against, herein, proclamation published on 18th November, 2021, required the applicant to appear at a specified place within 30 days (emphasis supplied). Thus, period specified was not in accordance with the provisions of Section 82. There lies difference between “NOT LESS THAN THIRTY DAYS” and “WITHIN THIRTY DAYS”. Therefore, as stated above, Section 82 being penal clause, making the accused susceptible to punishment under Section 174-A of the Indian Penal Code, the procedure enacted under Section 82 has to be followed strictly, which has not been followed in the case in hand.*

10. *This Court in the case of **Rammi Paramjeetsingh Rajput V/s. State of Maharashtra (Through Gangapur Police Station, Nashik City) and Others (2021) SCC Online Bombay 2059**, has held in para 8 as under:-*
 - “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.”

11. *Thus for the foregoing reasons, in my view, though the order dated 17th November, 2021 directing to issue written proclamation under Section 82 in FORM No.4 of the Criminal Procedure Code, cannot be faulted with, yet the proclamation issued in FORM No.4 being contrary to the mandate of Section 82, it is to be quashed and set aside. Thus, in view of the facts of the case and for the reasons aforesaid, the order publishing the proclamation against the applicant being Proclamation No.02/2021 in C.R. No.71/2021, is quashed and set aside.”*

6. As noted above, the said order dated 1st December 2021 has attained finality, inasmuch as, the said order has not been challenged by the prosecution. The said order dated 1st December 2021 will also cover the case of the applicant.

7. Considering the aforesaid, the proclamation issued in Form No.4 being contrary to the mandate of Section 82, is quashed and set aside, though the order dated 17th November 2021 directing to issue written proclamation under Section 82 in FORM No. 4 of the Criminal Procedure Code, cannot be faulted with. Accordingly, the order publishing the

proclamation against the applicant being Proclamation No.04 of 2021 in C.R. No.71 of 2021, is quashed and set aside.

8. Application is allowed and disposed of in above terms.
9. Needless to state, that the prosecution is always at liberty to take steps in accordance with law.
10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.