



* IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 900/2021 & CRL. M.A. 4511/2021

Reserved on : 24.03.2022

Date of Decision : 29.03.2022

IN THE MATTER OF:

MOHD. IMRAN Petitioner
Through: Mr. Shahid Ali, Advocate.

Versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Sanjeev Sabharwal, APP for State.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

J U D G M E N T

MANOJ KUMAR OHRI, J.

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioner seeking setting aside of the order dated 23.03.2010 passed by the learned ACMM (SE), New Delhi in FIR No.385/03 registered under Sections 448/380/420/468/471/506/120B IPC at P.S. Sarita Vihar, Delhi, vide which the petitioner was declared a '*proclaimed offender*' (hereinafter, referred to as '*PO*').

2. To put briefly, the present FIR was registered on the complaint of one *Noor Ahmad*/complainant, wherein it was stated that he was bequeathed the



stated property by his father. One *Atique Ahmad*, i.e. brother of the complainant, was permitted by him to reside on the first floor of the property, while he himself visited the same from time and time. On one such visit, the complainant found the property occupied by the petitioner and others, whom he knew from before, and his belongings/valuables missing. On the complainant making enquiry, the said persons, including the petitioner, extended threats for life. Soon after, *Atique Ahmad* arrived at the spot. He claimed that he had sold the property to co-accused/*Altamash* and ousted the complainant. Later, it came to light that *Atique Ahmad* had forged the signatures of the petitioner's father on documents relating to the property and sold the same to accused/*Altamash* and others. The charge sheet in the case was filed on 19.05.2007. Vide order dated 09.09.2004, the petitioner was admitted to bail in the present case by the learned Metropolitan Magistrate.

3. Learned counsel for the petitioner submitted that in the present case, the process under Section 82 Cr.P.C. was issued against the petitioner at wrong address. Pursuant to the grant of bail, the petitioner had furnished his bail bond, wherein address of *E-*, Muradi Road, Batla House, Okhla* (hereinafter, referred to as the '*old property/old address*') was mentioned. However, subsequently, he and his family members entered into litigations, involving partition of properties owned by his father. As a result thereof, the old property, address whereof was mentioned in the bail bond furnished before the Trial Court, went to the share of the petitioner's brother, while another property i.e. *House No.3**, Okhla, Jamia Nagar* (hereinafter, referred to as '*the new property/new address*') came to his own share. The petitioner started living at his new address and thereafter shifted to Noida for



some time for a job. Eventually, he shifted back to the new property, but in all that time, he was not approached by any police official regarding the present case. As a result, he was not aware of the NBWs and/or the proclamation issued against him, and obtained knowledge of the same only in the year 2021, when co-accused/*Altamash* was arrested.

It was stressed that the petitioner was not intentionally concealing himself, inasmuch as his new address was available in the records of CS (OS) No.1948/2006 pending before this Court. In this regard, it was contended that a copy of the order passed in the civil suit is before the Trial Court, and is also likely to have been made available to the concerned Officer who approached the old address to serve process under Section 82 Cr.P.C., where instead of the petitioner, his brother was residing at the time as a result of the partition proceedings.

It was further submitted that the impugned order suffers from the vice of non-application of mind, as the concerned Court failed to record any reason for believing that the petitioner was intentionally avoiding service/process and issued proclamation without following due procedure. It was stressed that the procedure outlined under Section 82 Cr.P.C. having not been duly followed, the proclamation issued was bad in law.

4. Learned counsel also argued that in terms of Section 82(4) Cr.P.C., the petitioner could have been pronounced only a '*proclaimed person*' but not PO. In this regard, reliance was placed on the decision in Sanjay Bhandari v. State (NCT of Delhi) reported as **2018 SCC OnLine Del 10203**.

5. Lastly, it was informed that Charge has been framed against the petitioner and he has been appearing before the Trial Court regularly, since grant of interim protection by this Court.



6. Learned APP for the State, on the other hand, opposed the present petition. He submitted that the petitioner was initially released on regular bail vide order dated 09.09.2004, whereafter he absconded and came to be declared PO. He further submitted that an application seeking anticipatory bail filed on behalf of the petitioner was dismissed by this Court vide order dated 09.03.2021 passed in BAIL APPLN.825/2021. It was also submitted that the petitioner is a habitual offender with multiple previous involvements.

7. I have heard learned counsels for the parties and perused the material placed on record.

8. In the present case, a perusal of the order dated 28.05.2008 passed by the learned Metropolitan Magistrate would show that initially, the NBWs issued against the petitioner were not sent to P.S. Jamia, and thus, fresh NBWs came to be issued. Subsequently, on 10.12.2008, the Link Magistrate issued the process under Section 82 Cr.P.C. against the petitioner and on the same day, it was received back as executed. The order dated 10.12.2008 reads as under:-

*“Ld. PO is on leave today. Bail bond has been traced and placed in the judicial file. Proclamation u/s 82 CrPC against accused Mohd Imran be issued to be given dasti to the surety.
To come up on 16/3/09*

2nd LMM: ND/10-12-2008

At this stage process u/s 82 CrPC of Accused Mohd Imran and Altamas is received back as executed. Process be issued to call the P/S. Date already fixed.

2nd LMM/ 10/12/08”



9. On 23.03.2010, statement of the process server, who executed the process under Section 82 Cr.P.C. against the petitioner, was recorded. In his order of the same date, the learned ACMM observed as follows:-

“Process Server HC Rajender Kumar Sharma who executed the process u/s 82/83 Cr.P.C against the accused Mohd Imran and Altmas is present. His statement to this effect has been recorded separately.

I have perused the same. It appears that accused are avoiding his arrest /service intentionally and no property either movable or immovable found in the name of accused. In view of above, the accused Mohd Imran and Altmas are hereby declared Proclaimed Offender (P.O) in this case.”

10. A plain reading of sub-section (1) of Section 82 Cr.P.C. would show that if a Court has ‘*reason to believe*’ that a person, despite issuance of warrant against him, is concealing or absconding himself so that such warrant remains unexecuted, the Court may publish a written proclamation requiring the person to appear at a specified place and time, which is not less than 30 days from the date of publishing of such proclamation.

11. The expression ‘*reason to believe*’ appearing in sub-section (1) of Section 82 Cr.P.C. means sufficient cause to believe. Section 26 IPC also explicates that a person is said to have ‘*reason to believe*’ a thing if he has sufficient cause to believe that thing but not otherwise. Thus, ‘*reason to believe*’ that a person against whom warrant is issued is either absconding or concealing himself should be reflected by the material placed on record before the Court. The use of expression ‘*so that such warrant cannot be executed*’ further implies that the person must be attributed with the



knowledge that such warrant has been issued against him and his abscondence or concealment is intentional.

12. On a perusal of Section 82(4) Cr.P.C., it is observed that the use of the expression ‘*after making such inquiry as it thinks fit*’ implies that at the time of pronouncing a person as ‘*proclaimed person*’ or PO, the concerned Court has to satisfy itself that the steps indicated in Section 82(1) Cr.P.C. are scrupulously followed. The Court is required to record reasons either after taking evidence or without evidence that the person against whom warrant was issued has absconded or concealed himself so that such warrants cannot be executed.

13. In connection with the issue arising in the present case, I deem it apposite to refer to the decision rendered by a Co-ordinate Bench of this Court in Dalmia Resorts International Pvt. Ltd v. Deepak Gupta and Anr. reported as **2002 SCC OnLine Del 538** while dealing with a complaint case under the N.I. Act, wherein it was opined that issuance of proclamation and attachment orders are exceptional remedies. While also taking note of the non-application of mind by the concerned Magistrate to the Report of the process server, the Court had quashed the proceedings initiated under Sections 82/83 Cr.P.C. against the accused therein in the following terms:-

“3. ...This apart, proclamation for any person absconding can be issued if the Court has the reasons to believe that the person against whom a warrant has been issued by it has absconded or is concealing himself and that warrant of arrest cannot be executed only then the Court is empowered to publish a written proclamation requiring him to appear to a specified date and time, within thirty days from the date of publication of such proclamation. The term ‘absconding’ does not necessarily imply



a change of place. The petitioner being a private limited company, the question of its absconding does not arise. The process of proclamation and attachment are exceptional remedies and should not be issued as a matter of course whenever the warrant is returned unexecuted. The non-conformance of Section 82(1) and (2) would be violation of the procedure established by law within the meaning of Article 21 of the Constitution of India. It appears that while issuing process under Sections 82/83 Cr. P.C., the Court did not even notice the report on the warrant. The impugned order issuing proclamation against the petitioner, on the face of it is not sustainable.

(emphasis added)

14. It is deemed expedient to refer also to the decision rendered by another Co-ordinate Bench of this Court in G.Sagar Suri v. State and Anr. reported as **2003 SCC OnLine Del 759**, where the importance of recording of reasons by the Magistrate before issuing written proclamation has been noted:-

“13. It is manifest from the provisions of Section 82 Cr. P.C. that before publishing the written proclamation requiring the accused to appear under the provisions of Section 82 Cr. P.C. the court has to record the reasons either after taking evidence or without evidence that a person against whom warrants have been issued has absconded or is concealing himself so that such warrants cannot be executed. The procedure for publication of the proclamation is laid down in sub-section (2) of Section 82. Sub-section (1) provides that the Court shall wait for thirty days after publication of the proclamation for the appearance of the accused and it is only after processes under Section 82 Cr. P.C. are exhausted that the next step under Section 83 is to be taken by the Court.

(emphasis added)

15. Recently, this Court in Rajesh Ebrahimkutty Majidhabeevi v. State (Govt. of NCT of Delhi) and Another reported as **2021 SCC OnLine Del**



4642 also held that the provisions of Section 82 (1) and (2) Cr.P.C. should be construed strictly and before issuing process, the concerned Court has to record its satisfaction that the accused has absconded or is concealing himself to avoid execution of warrants.

16. It is worthwhile also to note that the issuance of process under Section 82 Cr.P.C. and pronouncing a person as '*proclaimed person*' or PO entail serious consequences, including not only deprivation of personal liberty of a person, but also attachment of properties and initiation of proceedings under Section 174A IPC against such person. Therefore, any order to that effect must reflect satisfaction of the Court that the person concerned has absconded or is concealing himself to avoid the process of law. Even otherwise, reasons form the heart and soul of any judicial pronouncement. No judicial order is complete without reasons and it is expected that every Court, which passes an order, should give reasons for the same [Refer: Sebastiani Lakra and Others v. National Insurance Company Limited and Another reported as **(2019) 17 SCC 465**].

17. In the present case, a perusal of the order dated 10.06.2008 passed by the learned Metropolitan Magistrate would show that initially, the proclamation under Section 82 Cr.P.C. was issued in respect of the petitioner at a wrong address. Subsequently, fresh proclamation under Section 82 Cr.P.C. was directed to be issued on the address given in his bail bond, i.e. the old address.

At first, the bail bond could not be traced. However, on 10.12.2008, the bail bond was traced and placed on judicial file and fresh proclamation was directed to be issued to the petitioner. In an order passed on the same



day i.e., on 10.12.2008 itself, it was recorded that process issued against the petitioner under Section 82 Cr.P.C. was received back as executed.

From the impugned order, it is further apparent that the learned ACMM did not record any reasons for his belief that the petitioner was intentionally avoiding service/process.

18. The petitioner's case is that he was initially residing at the old property, and the address thereof was provided at the time of furnishing of bail bond. However, subsequently, owing to partition proceedings between him and his family members, the old property went to the share of his brother. For this reason, when process was statedly issued against him at the old address, he was not found. Though he failed to bring the change in his address on the records of the case pending before the Trial Court, it was urged that the petitioner was not intentionally concealing himself, insofar as his new address was available in the records of CS (OS) No.1948/2006 pending before this Court and a copy of the order passed therein is on record before the Trial Court.

19. Needless to state, the petitioner himself was obligated to apprise the Trial Court about the change in his address. However, considering the manner in which proclamation came to be issued against him, especially the fact that process was considered to have been received back as executed on the very day it was issued, the whole process issued against him under Section 82 Cr.P.C. stands vitiated in the opinion of this Court.

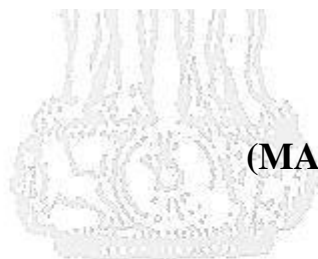
20. Besides, in view of the decisions of Coordinate Benches of this Court in Sanjay Bhandari (Supra), Arun Kumar Parihar v. State (Govt. NCTD)



reported as **2021 SCC OnLine Del 2767** and Manoj Tandon v. State, CRL.M.C. 1961/2020, the impugned order reflects non-application of mind by the learned Judge, as the petitioner, who is not accused of any of the offences punishable under Sections enumerated in Section 82(4) Cr.P.C., could only have been pronounced a '*proclaimed person*' if the process did not otherwise stand vitiated, and not declared PO.

21. In addition, pursuant to the earlier directions passed by this Court, the petitioner is stated to be regularly appearing before the Trial Court. Accordingly, the present petition is allowed and the impugned order is set aside. Miscellaneous application is disposed of as infructuous.

22. A copy of this order be communicated to the concerned Trial Court for information.



(MANOJ KUMAR OHRI)
JUDGE

MARCH 29, 2022

न्यायमेव जयते