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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 11.04.2022

+ **CRL.M.C. 1538/2022**

SH VIVEK CHAUHAN

..... Petitioner

Through: Mr.Gaurav Kakar and Mr.Shubham
Bhatia, Advocates

versus

GOVT OF NCT OF DELHI THROUGH ITS
STANDING COUNSEL CRIMINAL

..... Respondent

Through: Ms.Rajni Gupta, APP for the State
with SI Ankur, P.S.: Janakpuri.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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J U D G M E N T

ANOOP KUMAR MENDIRATTA, J (ORAL)

CRL.M.A. 6655/2022

Exemption allowed, subject to all just exceptions.

Application is accordingly disposed of.

CRL.M.C. 1538/2022 & CRL.M.A. 6656/2022 (STAY)

1. The present petition has been filed on behalf of the petitioner under Section 482 Cr.P.C. seeking quashing/setting aside of the order dated



15.03.2022 passed by Ld.M.M., Dwarka Courts, Delhi in CR. Case No.3800/2021 titled as 'State vs. Vivek Chauhan', thereby dismissing the exemption application filed on behalf of the petitioner and directing issue of process under Section 82 Cr.P.C. against the petitioner.

2. Issue notice. Learned APP for the State appears on advance notice served upon the State and accepts notice.

3. I intend to dispose of the petition at this stage itself, considering the fact that a glaring irregularity appears to have been committed by Ld.M.M. by directing initiation of proceedings under Section 82 of Code of Criminal Procedure, 1973 (Cr.P.C.).

3. As per the case of the petitioner, cognizance of the offence was taken on 28.09.2021 and summons were issued to the accused/petitioner returnable for 11.01.2022. In compliance of the aforesaid summons, petitioner duly appeared before the court on 11.01.2022 and the matter was listed for 15.03.2022. However, on 15.03.2022, the exemption application was filed on behalf of the petitioner since he had proceeded out of India and made a request that he shall be returning in the last week of May, 2022.

However, the learned trial court initiated the proceedings under Section 82 Cr.P.C. after rejecting the exemption application on the ground that the application is silent as to the purpose and place, wherein the petitioner/accused had proceeded.

4. It is urged by learned counsel for the petitioner that the order passed by learned trial court is in complete disregard of the provisions of law, since the proceedings under Section 82 Cr.P.C. were directed to be initiated merely on non-appearance on 15.03.2022 after disallowing the application for exemption from appearance.



Reliance has been further placed upon the observations in '*Court on its Motion vs. Central Bureau of Investigation*' 2004 (72) DRJ 629 and '*Mani Shandly and Ors. vs. The State and Ors.*' 2008 (102) DRJ 578.

5. In order to appreciate the contentions raised by learned Counsel for the petitioner, order dated 15.03.2022 passed by learned Trial Court may be reproduced:-

*"Cr. Case 3800/21
State vs Vivek Chauhan
FIR No. 205116
PS: Janakpuri*

15.03.2022

*Present:- Ms. Rajesh Kumari, Ld. APP for the State.
Ld. Counsel for accused.*

Exemption application has been filed on behalf of the accused on the ground that he has gone out of India and shall return in the last week of May 2022. The application is silent about for what purpose and the place where he has gone. It seems that accused is deliberately evading process of the court.

Accordingly, let process u/s 82 Cr. PC be issued against the accused through DCP concerned on his last known address with directions to execute the same at least 30 days before the date given. The process server is also directed to ensure the execution of the aforesaid process by :-

- 1. Affixation on the main gate of the house of the accused.*
- 2. The photographs regarding the affixation of the process in the aforesaid manner be also filed along with the report.*
- 3. By public announcement in the area.*
- 4. To record the statement of two respectable members of the society regarding the execution of the process in the aforesaid manner.*

IO is also directed to ensure the publication of the process in the leading National English/Hindi/ Vernacular



languages newspaper having circulation in the area of the residence of the accused.

Be put up for report on 10.06.2022.

(Sd/-)

MM-II/DWARKA/DELHI

15.03.2022”

6. Section 82 of Cr.P.C. may also be beneficially quoted:

“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 Sections 302, 304, 364, 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). ”

7. It may be noticed that 82 of Cr.P.C clearly provides that the court may publish a written proclamation against a person requiring his appearance only after the court has issued warrants and has reasons to believe that a person against whom warrants have been issued has absconded or is concealing himself so that such warrants cannot be executed.

The observations of Supreme Court in '***State through CBI vs. Dawood Ibrahim Kaskar and Ors.***', AIR 1997 SC 2494 in respect of proceedings under Section 82 Cr.P.C are also apt to be noticed and the provision is well settled:-

“..... Needless to say the provisions of proclamation and attachment as envisaged therein is to compel the appearance of a person who is evading arrest. The power of issuing a proclamation under Section 82 Cr.P.C. can be exercised by a Court only in respect of a person against whom a warrant has been issued by it..... ”



8. On the face of record, it appears that Ld.M.M. proceeded in haste, without adhering to the provisions of Section 82 Cr.P.C. and failed to appreciate that proceedings under Section 82 Cr.P.C. cannot be initiated in a routine manner and pre-requisites of Section 82 Cr.P.C. need to be complied in first instance.

9. It may further be noticed that Ld.M.M. had taken the cognizance of the offence vide order dated 28.09.2021 and the summons were directed to be issued to the accused returnable for 11.01.2022. Petitioner/accused was duly present before the court along with his counsel on 11.01.2022. Vide aforesaid order, a court notice was directed to be issued to the complainant through SHO and also accused was directed to appear before the court on the next date of hearing i.e. 15.03.2022. The matter was further listed for appearance of the parties/supplying copy of charge-sheet/furnishing bail/further proceedings.

A bare perusal of order dated 15.03.2022 reveals that the matter was merely listed for formal proceedings on 15.03.2022. As such, mere non-appearance of the petitioner/accused at the initial stage itself, after having duly appeared before the court on 11.01.2022, did not warrant initiation of proceedings under Section 82 Cr.P.C., in the first instance. Even otherwise, it appears that while rejecting the application for exemption, Ld.M.M. wrongly presumed that accused is deliberately evading the process of the court since the petitioner/accused had already appeared before the court on 11.01.2022 in compliance of order dated 28.09.2021. At the best, petitioner could have been directed to furnish the better particulars in the application, in case the application for exemption did not reveal the purpose and place



wherein the petitioner had proceeded. Ld.M.M. erred in presuming that the application had not been moved for *bonafide* reasons.

In the facts and circumstances, on the face of record, initiation of proceedings under Section 82 Cr.P.C. is in complete ignorance of provisions of law. Accordingly, the proceedings under Section 82 Cr.P.C. initiated by the Ld.M.M. vide order dated 15.03.2022 are hereby set aside.

Petitioner is directed to appear before the learned trial court on the next date of hearing i.e. 10.06.2022. It is also clarified that no coercive action shall be taken against the petitioner till next date of hearing, on the basis of the orders passed by the learned trial court.

10. It shall be appropriate that newly recruited officers of Delhi Judicial Service may be sensitized by holding of appropriate sessions at Delhi Judicial Academy with reference to proceedings under Section 82/83 Cr.P.C.

Petition is accordingly disposed of. CRL.M.A. 6656/2022 also stands disposed of.

A copy of this order be forwarded to the Director, Delhi Judicial Academy and learned trial court for information and compliance.

ANOOP KUMAR MENDIRATTA
(JUDGE)

APRIL 11, 2022

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