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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: July 20, 2022
Decided on: September 26, 2022

+ CRL.M.C.2431/2022 & CRL.M.A.10216/2022(Stay)

JASKARAN SINGH

..... Petitioner

Through: Mr. Ishwar Randhawa and
Mr. Dhananjay Grover,
Advocates.

V

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Raghuvinder Varma,
APP for State with SI
Sandeep Singh, P.S. IGI
Airport.

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CORAM:

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The present petition is filed under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “**the Code**”) to impugn order dated 29.08.2012 passed by the Court of ACMM-01, Dwarka whereby the petitioner was declared as an “absconder” in FIR bearing No. 0408/2004 registered under sections 419/420/468/471/474/120B of the Indian Penal Code, 1860

(hereinafter referred to as the “**IPC**”) at P.S. IGI Airport alongwith subsequent proceedings.

2. The relevant facts as stated in the petition are that the petitioner was implicated in FIR bearing No. 408/2004 registered under sections 419/420/468/471/474/120B IPC at P.S. IGI Airport. The petitioner was stated to be arrested on 05.09.2004 and was granted regular bail in the month of September, 2004. Thereafter, the petitioner attended the court proceedings regularly during the period with effect from 2004-2019. The petitioner in the mid of the year 2009 had to move out of his parental home due to inter-family dispute and shifted to undisclosed location. The petitioner engaged a local lawyer in Delhi who assured quick clean-chit and discharge in the criminal proceedings arising out of FIR bearing No. 408/2004. The petitioner after 08.10.2009 was assured by Charanjit Singh that the criminal proceedings against him has been abated and thereafter, the petitioner had left for United Kingdom on a student visa on the assurance that he has already been discharged in the criminal proceedings arising out of FIR bearing No. 408/2004.

2.1 The Court of Shri Rajesh Kumar Goel, ACMM-02, Dwarka, Delhi issued bailable warrant against the petitioner on 16.11.2009 due to his non-appearance in the trial with notice to surety under section 446 of the Code. Thereafter, vide order dated 23.12.2010, non-bailable warrant was ordered to be issued against the petitioner on 19.04.2011. Dalwinder Singh, surety of the petitioner appeared before the Court on 23.12.2010 and informed the Court that the petitioner is not traceable despite his best efforts. Accordingly, the surety Dalwinder Singh was ordered to deposit Rs.50,000/-. The surety Dalwinder Singh was ordered to be discharged as he deposited Rs.50,000/- in the Court. The non-bailable warrant issued against the petitioner for 19.04.2011 received unexecuted with the report that the petitioner had left the country and had gone abroad. As the non-bailable warrant issued against the petitioner received back unexecuted, the Court of Shri Rajesh Kumar Goel, ACMM-02, Dwarka vide order dated 19.04.2011 opined that the petitioner is avoiding arrest and is concealing himself deliberately. Accordingly, the process under section 82 of the Code was ordered to be issued against the petitioner on 17.08.2011.

2.2 The concerned trial Court despite having the categorical report that the petitioner has left the country, issued the process under section 82 of the Code without considering the report. The proclamation issued by the trial Court was in contravention of the mandatory procedure as mentioned under section 82 of the Code as the trial Court has not recorded its satisfaction that the petitioner could not be served except through proclamation. The HC Surender Singh who was entrusted with the execution of process under section 82 of the Code recorded a cryptic report and the perusal of report dated 10.08.2011 reflects that the said report was neither served upon the petitioner personally nor upon any of his family members and the process under section 82 of the Code stated to have been executed by pasting a copy in the public place in the village, making public announcement and a copy of the process was pasted at the local Court Hoshiarpur.

2.3 The conjoint reading of the report of the process-server/serving official dated 10.08.2011 and proclamation soliciting the presence of the petitioner to appear on 17.08.2011 reflects that the requirement of statutory period of 30 days from the date of publication stands flouted

as the petitioner was warranted to appear on 11 days post the publication of proclamation.

2.4 The Court of ACMM-01 on 17.08.2011 without recording the statement of the process-server/serving official and following mandate of section 82 of the Code recorded that the process under section 82 of the Code has been executed. Thereafter, due to non-appearance of the process-server/serving official, the proceedings were adjourned to 24.10.2011, 20.12.2011, 02.04.2012 and 09.07.2012.

2.5 The trial Court vide order dated 29.08.2012 (hereinafter referred to as “**the impugned order**”) without recording mandatory statement of the process-server/serving official as per section 82 of the Code and after relying on cryptic statement of the process-server/serving official dated 10.08.2011, declared the petitioner as an “absconder” against the provisions of section 82 of the Code.

3. The petitioner challenged the impugned order on the grounds that the proclamation proceedings and the impugned order are bad in law as the mandatory provisions as per section 82 of the Code were not followed and complied with. The trial Court did not record the subjective satisfaction on the material available before him regarding

whether the petitioner absconded or concealed himself. The impugned order was passed in mechanical manner without application of mind and is suffering from glaring infirmity. The trial Court has not recorded its satisfaction that the warrant against the petitioner cannot be executed and as such, the impugned order is *void ab initio*. The petitioner was not residing at the given address and the Court should have followed the procedure as mentioned under section 82 (2) (ii) of the Code and the proclamation should be published in the daily newspaper. The petitioner has also raised various other grounds to challenge the impugned order. It is prayed that the impugned order be set aside.

4. Chapter IV of the Code deals with processes to compel appearance. Part C of the Chapter IV deals with proclamation and attachment. Section 82 of the Code deals with proclamation for absconding person. It 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, 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).

5. The counsel for the petitioner argued at length and submitted detailed arguments. The counsel for the petitioner in the written

submissions as well as in oral arguments stated that the concerned trial Court without recording the statement of the process-server/serving official so as to record satisfaction and without following the mandatory procedure as contained in section 82 of the Code declared the petitioner as an “absconder”. The petitioner was under the impression that the proceedings against him arising out of FIR bearing No. 408/2004 have been abated. The petitioner is ready to surrender before the Court and join the proceedings before the trial Court. The trial Court has also granted less than 30 days from the date of publishing of the proclamation to appear in the Court. The counsel for the petitioner also referred judgments as mentioned herein below. The written submissions made by the petitioner are considered in the right prospective.

6. This Court in CRL.M.(M) bearing No. 206/2000 titled as **Sunil Kumar V State &another**, decided on 14.09.2001 cited by the counsel for the petitioner, discussed the scope of section 82 and held as under:-

5. Mere perusal of the Section 82 shows that before a proclamation can be issued, the court should have reasons to believe (whether after taking evidence or not), that a person against whom a warrant was issued has absconded or is

concealing himself and that the warrant cannot be executed. It may be subjective satisfaction but it cannot be totally without any material. Only after recording such satisfaction, the Court can direct the publication of a written proclamation requiring such person to appear at a specified place within the period, not less than 30 days from the date of said publication. Sub-clauses (a), (b) and (c) of clause (i) of sub-section (2) of Section 82 provide that the manner in which proclamation should be published, by reading it in some conspicuous place of the town, by affixing it on some conspicuous part of the house where the person ordinarily resides, and by affixing on some conspicuous part of the court house. Sub-clause (2) also provides that if the court thinks fit, the proclamation can be published in some daily newspaper, circulating in the place in which such person ordinarily resides. Lastly, sub-section (3) of Section 82 states that a statement in writing by the court issuing proclamation to the effect that the proclamation was duly published on the specified day in the specified manner in clause (i) of sub-section (2) would be deemed to be conclusive evidence that the requirements of Section were complied with.

6.1 This Court in CRL.M.C. bearing No. 5328/2013 titled as **Sunil Tyagi V Government of NCT of Delhi & Anr.**, 2021 SCC OnLine

Del 3479 observed as under:-

24.5 Reliance is placed on **Md. Nazrul Islam v. State of Assam**, 2008 Cri LJ 3374, in which the Gauhati High Court held that before issuing the declaration, the Court must record reasons to believe that the person, against whom the proclamation has to be issued, is absconding or is concealing himself. The High Court further observed that mere return of warrants of arrest without execution without anything more does not authorize the Magistrate to issue an order for proclamation and attachment. Proclamation and attachment affect certain valuable rights of a person although that

person might be facing a criminal case as an accused and the same is not to be interfered with in a casual and mechanical manner, but effected by strict adherence to the provisions of law.

Findings

25. This Court is satisfied that the petitioner was never served with the summons/warrants before being declared as a Proclaimed Offender and therefore, the declaration of the petitioner as a Proclaimed Offender is not valid. The Trial Court has passed the impugned order in a routine manner without satisfying whether the petitioner was avoiding or evading arrest. The declaration of the petitioner as a Proclaimed Offender is not valid and the charge against the petitioner under Section 174A IPC is liable to be quashed. That apart, the petitioner was not charged with any of the 19 offences mentioned in Section 82(4) CrPC.

7. It is reflecting from perusal of the record that the petitioner was implicated in FIR bearing No. 408/2004 registered at P.S. India Gandhi International Airport. The petitioner was arrested on 05.09.2004 and was granted bail in the month of September, 2004. The petitioner has attended the Court proceedings during the period with effect from 2004-2019. The petitioner as such was having the knowledge of the pendency of the trial arising out of FIR bearing No. 408/2004. The petitioner as per pleas mentioned in the petition has left India to United Kingdom on the assurance given by the local lawyer/Charanjit Singh in Delhi that the proceedings against him have

been abated. However, the said plea of the petitioner does not inspire any confidence as it is not believable that the petitioner who attended the Court till 2019 has left United Kingdom merely on the assurance given to him regarding the abatement of the case.

8. The trial Court due to non-appearance of the petitioner, issued the bailable warrant first alongwith notice to surety under section 446 of the Code. The surety, namely, Dalwinder Singh appeared before the trial Court on 23.12.2010 and informed that the petitioner is not traceable despite best efforts. The non-bailable warrant issued against the petitioner has also received back unexecuted with the report that the 'petitioner had left the country and had gone abroad'. It is apparent that the petitioner had left the country and went abroad without informing the trial Court and did not seek the permission of the Court before leaving the country. The trial Court has recorded its satisfaction on basis of reports given on coercive processes vide order dated 19.04.2021 by observing that the petitioner is avoiding arrest and is concealing himself and preferred to issue the process under section 82 of the Code. There is no factual and legal force in the arguments advanced by the counsel for the petitioner that the process

under section 82 of the Code was issued against the petitioner without recording of satisfaction by the trial court. It is relevant to mention that no other address of the petitioner except for address mentioned on coercive processes was available on the record and even the surety Dalwinder Singh has expressed his inability to produce the petitioner before the Court as he was not traceable. In these circumstances, the trial Court was not having any option except to issue the process under section 82 of the Code.

9. The counsel for the petitioner also argued that the trial Court has issued the process under Section 82 of the Code in contravention of the mandatory procedure as mentioned under section 82 of the Code. As per the report dated 03.04.2011 given on non-bailable warrant, the process-server/serving official had visited the given address of the petitioner where Jarnail Singh, Gram Pradhan, aged about 45 years met him who informed that the petitioner who was his nephew had gone to abroad. The statement of Jarnail Singh was also recorded. The process under section 82 of the Code was ordered to be issued vide order dated 19.04.2011 and the next date of hearing was fixed on 17.08.2011. It reflects that before issuance of the process under

section 82 of the Code, the trial Court has recorded its satisfaction on the basis of the report given on non-bailable warrant particularly, in view of the statement made by Jarnail Singh, Gram Pradhan of the Village where the petitioner was residing.

10. The process under section 82 of the Code was executed on 10.08.2011. The counsel for the petitioner also argued that the process-server/serving official has given a cryptic report on the process issued under section 82 of the Code. The report given on the process issued under section 82 of the Code is perused and as per the report, the process-server/serving official reached Police Station Tada from where the process-server/serving official alongwith HC Mahesh Kumar went to Village Feroze Rollia and enquired about the petitioner. The process-server/serving official pasted a copy of the notice at Village Choupal (common place for social gathering) and after beat of drums, a copy of the process under section 82 of Code also pasted outside the SDM Office on the notice board. The process-server/serving official also fulfilled the basic conditions as laid down in section 82(1)(2) of the Code by affixing the proclamation under section 82 of the Code at the conspicuous place of the Village as well

as in the office of SDM which is considered to be a local Court. Although the proclamation under section 82 of Code was not published in a daily newspaper circulated in the area, where the petitioner was residing as it is not a mandatory requirement. It is apparent that the trial Court has rightly issued the proclamation under section 82 of the Code and the report given by the process-server/serving official on the process under section 82 of the Code is non-cryptic and it was given in accordance with law. There is no illegality and infirmity in execution of process under section 82 of the Code and report thereon.

11. The process-server/serving official was called for statement vide order dated 17.08.2011 and subsequent also. The statement of the process-server/serving official who executed process under section 82 of the Code was not recorded. The trial Court vide impugned order declared the petitioner as “absconder” after going through the report dated 10.08.2011 and after being satisfied that the process has been properly executed against the petitioner and more than one month had been elapsed but the petitioner did not turn up. The trial Court as such has given more than thirty days to the petitioner for appearance before

the Court from the date of execution of process under section 82 of the Code on 10.08.2021 before declaring the petitioner as an “absconder” vide impugned order dated 29.08.2012. However, the petitioner did not appear before the trial Court after 30 days from date of execution of process under section 82 of the Code. No illegality was committed by the trial Court in declaring the petitioner as an “absconder”. The petitioner deliberately did not appear before the trial Court with the knowledge of pendency of the trial. The arguments advanced by the counsel for the petitioner are without any legal force.

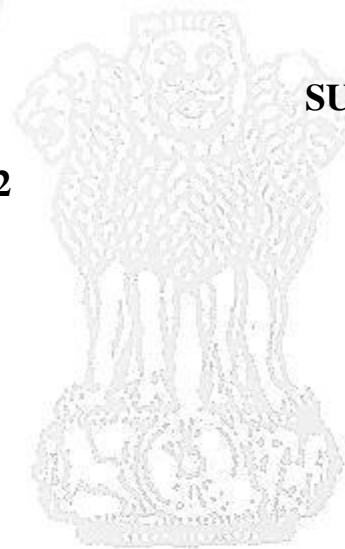
12. However, in the interest of justice, the petitioner is given one more opportunity to appear in person before the trial Court within two months from the date of this order and to file an application for recalling of the proceedings under section 82 of the Code and any consequent proceedings arising therefrom and to readmit on bail. The trial Court on filing of said application shall admit the petitioner on bail on terms and conditions as think fit by the trial Court under the given facts and circumstances of the case. The petitioner is also directed to file an affidavit before the Court that the petitioner shall appear regularly without any default to attend the Court unless the

petitioner is exempted by the trial Court from personal appearance and permitted to go abroad. It is made clear that if the petitioner fails to file the said application within given time, in that eventuality, the present petition shall deemed to be dismissed.

13. The present petition alongwith pending applications, if any, is accordingly disposed of.

**SUDHIR KUMAR JAIN
(JUDGE)**

SEPTEMBER 26, 2022
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