

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.449 OF 2023

Jitendra Ashok Bhosale

.....Applicant

Versus

State of Maharashtra

.... Respondent

Mr. Aman Kacheria, Advocate a/w. Jasmin Purani, Rahul Agarwal i/b. Agarwal & Dhanuka Legal, for the Applicant.

Mr. N.B. Patil, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 07th JUNE, 2023

P.C. :

1. Leave to amend to correct the prayer clause (A) in respect of the order dated 9.3.2023 passed under Section 82 of Cr.PC., is granted. Amendment to be carried out forthwith.

2. Heard Shri Aman Kacheria, learned counsel for the Applicant and Shri N.B. Patil, learned APP for the Respondent-State.

3. The Applicant is an accused in C.R. No.331/2022 registered at Vimantal police station, Pune city under Section

384 read with 34 of IPC and under Section 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crimes Act, 1999 (for short, MCOC Act). It is the case of the investigating agency that the Applicant could not be arrested as he was absconding and, therefore, the investigating agency obtained a warrant of his arrest issued by the Special Judge, Special Court, MCOC Act, Shivaji Nagar, Pune on 10.2.2023. According to the investigating agency, inspite of their efforts the Applicant could not be found and the warrant could not be executed and, therefore, they prayed for issuance of proclamation under Section 82 of Cr.P.C. This application was filed on 1.3.2023. On that day, learned Special Judge passed the following order :

“Read. Allowed. Issue proclamation as prayed.”

4. On 9.3.2023, learned Special Judge passed further order wherein he recorded his satisfaction that the Applicant had absconded and was keeping himself concealed to avoid execution of the warrant. Learned Judge, therefore, passed the proclamation order directing the Applicant to

remain present before that Court on 23.3.2023 to answer the complaint filed against him regarding the fact of his absconding to evade arrest.

5. The Applicant is challenging that order. The Applicant is also challenging the order dated 23.3.2023 wherein his application for rejection of the prayer for proclamation was disallowed. Vide a separate order dated 23.3.2023, learned Special Judge observed that the proclamation was already issued and, therefore, there was no question of rejecting the application praying for issuance of proclamation filed by the investigating agency.

6. Learned counsel for the Applicant submitted that sub-section (1) of Section 82 of Cr.P.C. mandates that the time to appear at a specified place and at a specified time cannot be less than 30 days. However, in the present case the first order was passed on 1.3.2023. The subsequent order was passed on 9.3.2023 and the Applicant was directed to remain present before the same Court on 23.3.2023. Thus, the period was lesser than 30 days. It was in violation of

the mandate of Section 82 of Cr.P.C. Learned counsel relied on two orders of two different Single Judges of this Court, in the following two cases :

- [i] **Rammi Paramjeet Singh Rajput Vs. The State of Maharashtra and others** passed in Criminal Application No.560/2021 dated 4.8.2021 [Coram: Revati Mohite Dere, J.]
- [ii] **Vinay Ramnarayan Singh Vs. The State of Maharashtra** passed in Writ Petition No.4551/2021 dated 1.12.2021 [Coram: Sandeep K. Shinde, J.]

7. He submitted that even in this case since the minimum period of 30 days is not given based on the ratio of these orders passed by the two Single Judge Benches of this Court, even the proclamation issued against the present Applicant in this case is liable to be set aside.

8. Learned APP tried to support the impugned orders. However, he fairly accepted that the period to appear before the Court was less than 30 days and, therefore, the ratio of both these aforesaid orders was squarely applicable to the present case.

9. I have considered these submissions. In both these orders, referred to hereinabove, the order of proclamation was set aside only on the ground that the period of appearance was less than 30 days. The same ratio is applicable to the present case. In the impugned proclamation order, the period of less than 30 days was given and, therefore, this proclamation is not sustainable. Consequently the Petition will have to be allowed. However, it needs to be clarified that the result of this Petition cannot affect the investigating agency's right to arrest the Applicant in accordance with law or even for the Court to pass fresh proclamation under Section 82 of Cr.P.C. in accordance with law fulfilling all the conditions mentioned under Section 82 of Cr.P.C.

10. Hence, the following order :

:: O R D E R ::

- i. The orders dated 1.3.2023, 9.3.2023 and 23.3.2023 issuing proclamation against the Applicant in

connection with C.R. No.331/2022 are set aside.

- ii. The investigating agency is at liberty to file fresh application for proclamation before learned Special Judge under MCOC Act, Pune for issuance of proclamation under Section 82 of Cr.PC.
- iii. If such an application is preferred by the investigating agency, learned Special Judge shall decide that application in accordance with law uninfluenced by this order.
- iv. It is clarified that the investigating agency is free to take all the necessary steps in accordance with law in connection with C.R. No.331/2022 in respect of the arrest of the present applicant.
- v. With these observations, the application is disposed of.

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
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(SARANG V. KOTWAL, J.)