

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

CRIMINAL WRIT PETITION NO.2549 OF 2023

Viraj Dnyaneshwar Vibhute

...Petitioner

Versus

The State of Maharashtra

...Respondent

Mr. Vivek N. Arote, Advocate, for Petitioner.

Mr. A.R. Patil, APP, for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 11th AUGUST 2023

PC :

1. The Petitioner has filed this Petition with three main prayers. At the outset, the learned Counsel for the Petitioner states that he is not pressing prayer clauses (a) and (b) therefore, today I am considering only prayer clause (c). By that prayer, the Petitioner is seeking quashing of the order dated 15th March 2022 passed by the Judicial Magistrate First Class Mohol, district Solapur in S.C.C. No.371 of 2015 arising out of the C.R. No.329 of 2013 dated 27th November 2013 under Section 65(c),(d) and 83 of the Maharashtra Prohibition Act 1949.

2. The impugned order is as follows:

“Issue proclamation under Section 82 of Criminal Procedure Code (for short “Cr.P.C.”) against Accused No.5.

The Petitioner is the Accused No.5 in the said case.

3. Learned Counsel for the Petitioner submitted that the impugned order is a cryptic order and it is not in conformity with the requirements of Section 82 of Cr.P.C. The order can not be given effect to considering the procedure prescribed under Section 82 of Cr.P.C. He submitted that on this ground alone the proclamation needs to be set aside.

4. Learned APP submitted that the matter is pending since 2013 and since then the Petitioner was not available. The only address which the Investigating Agency had, was an incorrect address and the Petitioner was not found on that address and for about 10 years he could not be arrested. On many occasions non-bailable warrants were issued. They could not be executed because the Investigating Agency did not have the correct address.

5. To this submission, learned Counsel for the Petitioner

responded by stating that the Petitioner was always available. He had preferred an Application for return of property in the trial Court, to the knowledge of the Investigating Agency. The Petitioner had also contested election for Municipal Corporation and, therefore, it can not be said that he was absconding.

6. I have perused the impugned order. The impugned order is cryptic, it is not in conformity with Section 82 of Cr.P.C. The relevant subsection of Section 82 arose as follows:

“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) -----

(5) -----”

7. Thus, there is a procedure for issuing proclamation. The Court while issuing proclamation has to pass an order requiring such person to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation. There is a procedure as to how the proclamation has to be published. All these important aspects are

missing from the impugned order, therefore, the impugned order is required to be set aside. However, at the same time, it can not be ignored that the Petitioner is not available for various reasons from the year 2013 onwards. Therefore, the Investigating Agency is at liberty to take appropriate steps to secure his presence in accordance with law.

8. Hence, the following order:

ORDER

- i) The order dated 15th March 2022 passed by Judicial Magistrate First Class Mohol, district Solapur in S.C.C. No.371 of 2015, issuing proclamation against the Petitioner, is set aside.
- ii) It is clarified that the said Court can initiate fresh process for issuing proclamation following the requirements of Section 82 of Cr.PC.
- iii) The Investigating Agency is at liberty to take appropriate steps to secure the presence of the

Petitioner in accordance with law.

iv) With these observations, the Writ Petition is disposed of.

(SARANG V. KOTWAL, J.)