

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10873 of 2022 (O&M)

Date of Decision:10.05.2023

Rishi Kapoor

.....Petitioner

Vs.

State of Haryana and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Deepam Raghav, Advocate
for the petitioner.

Mr. Randhir Singh, Addl. AG,
Haryana.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 of Cr.P.C is to quash FIR No.987 dated 25.11.2021 registered at Police Station Shivaji Nagar, Gurugram under Section 174-A of the Indian Penal Code and all the consequential proceedings arising therefrom.

2. As it emerges on perusal of the paper book, criminal complaint bearing No.NACT6578 of 2016 titled as “Indiabulls Housing Finance Ltd. Vs. Rishi Kapoor” was filed by respondent No.2 against the petitioner Rishi Kapoor to prosecute him under Section 138 of the Negotiable Instruments Act. During proceedings of the said case, petitioner was declared proclaimed person vide order dated 09.10.2017 and on the direction of the Court, present FIR under Section 174-A was registered on 25.11.2021.

3. Although quashing of the FIR under Section 174-A IPC has been sought on various grounds as pleaded in the petition but after hearing learned counsel for both the sides, I find that the petition deserve to be allowed because of the following reasons :

4. Section 82 of the Code of Criminal Procedure provides the

procedure for issuing proclamation for declaring the person as absconding. This is meant to procure the presence of an accused, who is evading the law. Said Section 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 subsection (1).”

5. In **Sonu Vs. State of Haryana – 2021(1) RCR (Criminal) 319**, a coordinate Bench of this court has summarized the law on the procedure prescribed under Section 82 Cr.P.C., for declaring the person as proclaimed offender. It was held as under: -

“The essential requirements of Section 82 of the Cr.P.C. for issuance and publication of proclamation against an absconder and declaring him as proclaimed person/offender may be summarized as under: -

*(i) Prior issuance of warrant of arrest by the Court is sine qua non for issuance and publication of the proclamation and the Court has to first issue warrant of arrest against the person concerned. (See **Rohit Kumar Vs. State of Delhi: 2008 CrL J. 2561**).*

*(ii) There must be a report before the Court that the person against whom warrant was issued had absconded or had been concealing himself so that the warrant of arrest could not be executed against him. However, the Court is not bound to take evidence in this regard before issuing a Proclamation under Section 82 (1) of the Cr.P.C.. (See **Rohit Kumar Vs. State of Delhi: 2008 CrL J. 2561**).*

*(iii) The Court cannot issue the Proclamation as a matter of course because the Police is asking for it. The Court must be prima facie satisfied that the person has absconded or is concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence. (See **Bishundayal Mahton and others Vs. Emperor: AIR 1943 Patna 366 and Devender Singh Negi Vs. State of U.P.: 1994 CrL LJ (Allahabad HC) 1783**).*

*(iv) The requisite date and place for appearance must be specified in the proclamation requiring such person to appear on such date at the specified place. Such date must not be less than 30 clear days from the date of issuance and publication of the proclamation. (See **Gurappa Gugal and others Vs. State of Mysore: 1969 CriLJ 826 and Shokat Ali Vs. State of Haryana: 2020(2) RCR (Criminal) 339**).*

(v) Where the period between issuance and publication of the

*proclamation and the specified date of hearing is less than thirty days, the accused cannot be declared a proclaimed person/offender and the proclamation has to be issued and published again. (See **Dilbagh Singh Vs. State of Punjab (P&H): 2015 (8) R.C.R. (criminal) 166 and Ashok Kumar Vs. State of Haryana and another: 2013 (4) RCR (Criminal) 550**)*

*(vi) The Proclamation has to be published in the manner laid down in Section 82 (2) of the Cr.P.C. For publication, the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house. The three sub-clauses (a)-(c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. (See **Pawan Kumar Gupta Vs. The State of W.B.: 1973 CriLJ 1368**). Where the Court so orders a copy of the proclamation has to be additionally published in a daily newspaper circulating in the place in which the accused ordinarily resides. Advisably, proclamation has to be issued with four copies so that one each of the three copies of the proclamation may be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides, to some conspicuous place of such town or village and to some conspicuous part of the Court- house and report regarding publication may be made on the fourth copy of the proclamation. Additional copy will be required where the proclamation is also required to be published in the newspaper.*

*(vii) Statement of the serving officer has to be recorded by the Court as to the date and mode of publication of the proclamation. (See **Birad Dan Vs. State: 1958 CriLJ 965**). (viii) The Court issuing the proclamation has to make a statement in writing in its order that the proclamation was duly published on a specified day in a manner specified in Section 82(2)(i) of the Cr.P.C.. Such*

statement in writing by the Court is declared to be conclusive evidence that the requirements of Section 82 have been complied with and that the proclamation was published on such day. (See Birad Dan Vs. State: 1958 CriLJ 965).

(ix) The conditions specified in Section 82(2) of the Cr.P.C. for the publication of a Proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the Proclamation and proceedings subsequent thereto a nullity. (See Devendra Singh Negi alias Debu Vs. State of U.P. and another: 1994 CriLJ 1783 and Pal Singh Vs. The State: 1955 CriLJ 318).

6. In addition to above, it is the requirement of law that proclamation should be published for that date on which the person concerned is required to put in appearance/surrender before the court and on his failure to do so, he is declared a proclaimed person/ offender. That date of his appearance/ surrender should not be less than 30 days from the date of publication of the proclamation.

7. In the present case, as the various zimni orders passed by the trial Court reveal, the bail granted to the petitioner on 05.12.2016 was canceled on 03.07.2017 due to his non-appearance. Warrants of arrest were directed to be issued for 03.08.2017. As the warrants of arrest were received unexecuted, proclamation was directed to be issued under Section 82 Cr.P.C for 01.09.2017 as per order dated 10.08.2017. The proclamation was effected on 01.09.2017 and the matter was adjourned to 09.10.2017 for awaiting the presence of the accused. As the accused- petitioner did not surrender on or before 09.10.2017, he was declared proclaimed person on that date.

8. The afore-said proceedings would reveal that the proclamation was issued on 10.08.2017 for 01.09.2017 and thus, the period given to the accused for surrender was less than 30 days. It is probably because of this reason that after

publication of the proclamation on 01.09.2017, the case was adjourned to 09.10.2017. However, no proclamation as contemplated under Section 82 Cr.P.C was issued for 09.10.2017, on which date, the petitioner was declared proclaimed person. Thus, mandatory provisions of Section 82 Cr.P.C have not been complied with.

9. Further, Section 174-A of the IPC reads as under:-

“174A. Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.—Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section(1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.”

10. As is evident from the above-said provision, Section 174A IPC consists of two parts. In case, proclamation was published under sub-section (1) of Section 82 Cr.P.C and the accused fails to appear pursuant to that proclamation, then he is liable to be punished for a term, which may extend to three years or fine or with both. However, in case the declaration was made under sub-section (4) of Section 82 Cr.P.C declaring a person as proclaimed offender, then he is liable to be punished with imprisonment for a term, which may extend to seven years and also with fine.

11. As per Section 82, it is only in respect of offences specified under sub-section (4) of Section 82 Cr.P.C that when proclamation is published under sub-Section (1) in respect of a person accused of an offence, that he can be pronounced as proclaimed offender, in case he fails to appear at the specified place and time. If the concerned person is involved in any offence, other than as

specified in subsection (4) of Section 82 Cr.P.C., then declaration to pronounce him as a proclaimed offender cannot be made. Rather, he is then to declared as a proclaimed person.

12. Section 138 of Negotiable Instruments Act does not find mention in sub-Section (4) of Section 82 Cr.P.C. and, therefore, if a person accused of committing an offence punishable under Section 138 of the Negotiable Instruments Act and against whom proclamation has been issued under Section 82 (1) Cr.P.C, fails to appear, he will be liable to be punished under the first part of Section 174A IPC, i.e. up to three years' imprisonment or with fine or with both; and not under second part of Section 174A IPC.

13. Proceeding further, Section 468 of the Code of Criminal Procedure reads as under:-

“Bar to taking cognizance after lapse of the period of limitation (1)
Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in Sub-Section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

14. Thus, a Court cannot take cognizance of an offence of the category specified in sub-Section (2) after the expiry of the period of limitation. The period of limitation for taking cognizance of an offence, punishable with the

imprisonment for a term exceeding one year but not exceeding three years, is three years. Thus, cognizance of an offence punishable under first part of Section 174A IPC cannot be taken after the expiry of three years.

15. In the present case, though the petitioner was declared proclaimed person vide order dated 09.10.2017 but the FIR in question under Section 174A IPC had been registered on 25.11.2021 i.e. much beyond the period of limitation of three years and so, obviously, the Court will be debarred from taking cognizance of such an offence under Section 174A IPC.

16. Still further, before the FIR was registered on 25.11.2021, beyond the period of limitation as has been noted above, the complaint under Section 138 of NI Act itself, in which the petitioner was declared proclaimed person had already been dismissed as withdrawn on the basis of compromise in Lok Adalat as per order dated 05.08.2021. Thus, FIR has been lodged after the complaint in question has already been withdrawn on the basis of compromise.

17. In ***Ashok Madaan Vs. State of Haryana and another, reported as 2020 (4) RCR (Criminal) 87***, it has been held by co-ordinate Bench of this Court as under:-

“No doubt, the learned counsel for the respondent has vehemently argued that the offence under Section 174-A IPC is independent of the main case, therefore, merely because the main case has been dismissed for want of prosecution, the present petition cannot be allowed, however, keeping in view the fact that the present FIR was registered only on account of absence from the proceedings in the main case which had been subsequently regularised by the court while granting bail to the petitioner, the default stood condoned. In such circumstances, continuation of proceedings under Section 174A IPC shall be abuse of the process of court.

7. Accordingly, the petition is allowed. FIR No.446 dated 21.08.2017,

registered under Section 174A IPC at police Station Kotwali, District Faridabad, as well as consequential proceedings shall stand quashed.”

18. This view has been further followed in ***Hari Singh Meena Vs. State of Haryana – CRM-M-45051 of 2022 decided on 13.12.2022; Amit Bansal @ Amit Vedparkash Bansal Vs. State of Haryana, CRM-M-41069 of 2022 (O&M) decided on 14.12.2022; and Ravi Kiran Vs. State of Haryana – CRM-M-10405 of 2022 (O&M) decided on 19.12.2022.***

19. From the afore-said discussion, it is clear that firstly, the petitioner was declared proclaimed person under Section 82 Cr.P.C without making compliance of the mandatory provisions; secondly, the FIR has been registered more than four years after declaring the petitioner as proclaimed person and so taking cognizance of the offence has become barred by time and thirdly, FIR has been lodged after the compromise had already been effected in the complaint case in which petitioner was declared proclaimed person and that complaint had been dismissed as withdrawn, on the basis of compromise.

20. Consequent to the above discussion, this petition is hereby accepted. FIR No.987 dated 25.11.2021 registered at Police Station Shivaji Nagar, Gurugram under Section 174-A of the Indian Penal Code and all the consequential proceedings arising therefrom, are hereby quashed.

May 10, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No