

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

272

CRM-M-38605-2023

Date of Decision : November 22, 2023

SATISH @ SATISH KUMAR

-Petitioner

V/S

STATE OF HARYANA

-Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Gautam Dutt, Advocate
for the petitioner.

Mr. Chetan Sharma, D.A.G., Haryana.

KULDEEP TIWARI, J.

1. Through the instant petition, the petitioner, who has been, consequent upon his being absconding in FIR No.227 dated 21.10.2009, under Sections 8/9 of The Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter referred to as the 'Act of 1988'), registered at P.S. Pillukhera, declared as "Proclaimed Offender", invokes the inherent jurisdiction of this Court, as envisaged under Section 482 of the Cr.P.C., thereby yearning for the quashing of FIR No.100 dated 12.05.2023 (hereinafter referred to as the "impugned FIR"), under Section 174-A of the IPC, registered at P.S. Pillukhera, District Jind.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

2. The learned counsel for the petitioner, in his constituting the bedrock for grant of the hereinabove extracted relief, has pitched the hereinafter extracted submissions:-

- (i) Since the offences, whereunder the petitioner has been declared as "Proclaimed Offender", are punishable under

Sections 8/9 of the Act of 1988 and prescribed maximum punishment whereof is upto 3 years, therefore, when the petitioner is not an accused for commission of any offences, as cited in Section 82(4) of the Cr.P.C., consequently, he could have been, at the best, declared as “Proclaimed Person” under Section 82(1) of the Cr.P.C., whereupon, the prescribed maximum punishment, in terms of Section 174-A of the IPC, is upto 3 years. Moreover, since by virtue of the statutory bar, as engrafted in Section 468 of the Cr.P.C., a Court is enjoined from taking cognizance of such an offence beyond three years, and as such, the impugned FIR is liable to be quashed.

(ii) Nonetheless, since the operation of a proclamation order ceases to operate pursuant upon arrest of a proclaimed offender, therefore, any subsequent registration of an FIR, in pursuance of such proclamation order, is nothing but a sheer abuse of the process of law. Accordingly, since in the instant case, the impugned FIR has been registered on 12.05.2023, i.e. post the arrest of the petitioner on 09.05.2023, in pursuance of the proclamation which was issued against him way back in 2010, therefore, it is liable to be set aside.

(iii) The impugned FIR is tainted with delay, inasmuch as, despite the proclamation order being drawn way back in 2010 and despite its being duly intimated to the police station concerned, yet the impugned FIR has been registered after a huge lapse of 13 years. Consequently, subjecting the petitioner to face trial in an FIR, which suffers from the vice of delay and

laches, would besides being a flagrant abuse of the process of law, not fetch the required objective.

FACTUAL MATRIX

3. Before embarking upon the process of ascertaining the validity of the impugned FIR, besides penning down any opinion *qua* the submissions raised by the learned counsel for the petitioner, it is deemed imperative to first notice the relevant facts, which led to registration of the impugned FIR.

4. The petitioner was convicted and sentenced to undergo Life Imprisonment in case FIR No.37 dated 10.02.1999, under Sections 302, 342, 506, 120-B, 34 of the IPC, registered at P.S. Narnaud, District Hisar. While being confined in Central Jail, Hisar, the petitioner was granted the concession of 6 weeks' parole on 21.08.2009 and he was required to surrender before the Jail authorities concerned on 03.10.2009. However, upon expiry of the term of parole, when the petitioner did not surrender, an FIR No.227 dated 21.10.2009, under Sections 8/9 of the Act of 1988 was registered at P.S. Pillukhera, District Jind.

5. Interestingly, even thereafter, the petitioner neither surrendered to honour the sentence of life imprisonment, nor made himself available for facing trial in FIR No.227 (supra). Resultantly, owing to his non appearance in FIR No.227 (supra), the petitioner was declared as "Proclaimed Offender" vide order dated 24.05.2010 and intimation in this regard was sent to the S.H.O., P.S. Pillukhera.

6. Finally, the petitioner was arrested on 09.05.2023 in FIR No.227 (supra), whereupon, the impugned FIR was registered against him.

ANALYSIS

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7. Before evincing any response *qua* amenability of the impugned FIR for being quashed or not, it is deemed imperative to refer to some of the significant legal provisions/propositions.

8. The issuance of proclamation commences upon an emergent display *qua* escape of a person from authority of law. Chapter VI of the Cr.P.C. contemplates the processes to compel appearance of a person. To be precise, Part A of Chapter VI of the Cr.P.C. deals with the process of summoning, besides also describes the mode and manner of serving a person(s), corporate body(ies) and society(ies), whose presence, according to the Court/Authority, is essential. Part B of Chapter VI of the Cr.P.C. prescribes the procedure for issuance of warrant of arrest of a person, and, Part C thereof deals with issuance of proclamation and attachment of property of a person, who has despite issuance of warrant, absconded or concealed himself.

9. In the instant case, the Part of Chapter VI of the Cr.P.C., which is relevant, is Part C. Section 82, as incorporated in Part C (*supra*), speaks about the procedure for issuance of proclamation against an absconding person, and, its Sub-section (1) empowers the Court to, upon having reasons to believe that any person against whom a warrant has been issued by it, is either absconding or concealing himself, so that such warrant cannot be executed, make publication of written proclamation.

10. It would also be pertinent to record here that, by Act 25 of 2005, Sub-section 4 was inserted in Section 82 (*supra*), which was brought into force w.e.f. 23.06.2006. This Sub-section confers jurisdiction upon the Court to, if despite issuance of proclamation *qua* a person accused of an offence under Section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396,

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397, 398, 399, 400, 402, 436, 449, 459 or 460 of the IPC, the said person fails to make appearance, declare him a “Proclaimed Offender”. Section 82 of the Cr.P.C. is reproduced hereinafter:-

“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.

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(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).]”

11. It would also be worth recording here that, through Act 25 of 2005, Section 174-A was also inserted in the IPC, which was brought into force w.e.f. 23.06.2005. This Section, which is extracted hereinafter, prescribes the punishment for the failure of a person to cause appearance, as required by a proclamation published under Section 82 of the Cr.P.C.

“[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.]”

12. The hereinabove extracted provisions explicates that a person, who fails to cause appearance, in pursuance of a proclamation published under Section 82(1) of the Cr.P.C., shall be punished with a lesser punishment, i.e. imprisonment for a term which may extend to three years or with fine or with both, whereas, upon a person becoming declared as “Proclaimed Offender”, under Section 82(4) of the Cr.P.C., he shall be punished with a greater punishment, i.e. imprisonment for a term which may extend to seven years and shall also be liable to fine.

13. In other words, the insertion of Section 174-A in the IPC has made the non-appearance of an accused, in response to the proclamation under Section 82 of the Cr.P.C., a substantive offence.

REASONS FOR REJECTING THE SUBMISSIONS OF THE

LEARNED COUNSEL FOR THE PETITIONER

14. Since the prime and star argument of the learned counsel for the petitioner ensues from there being an absolute bar, in terms of Section 468 of the Cr.P.C., upon the Court to take cognizance of an offence beyond the period of limitation, which is three years in the instant case, therefore, it is deemed imperative to extract the provisions of Section 468 of the Cr.P.C., which are extracted hereinafter:-

468. 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.]”

15. What undoubtedly emanates from a reading of the hereinabove extracted provisions is that, by dint of Clause (c) of Sub-section (2) of Section 468 of the Cr.P.C., the period of limitation in the instant case is three years, inasmuch as, the prescribed maximum punishment for the offences involved in the instant case is upto three years. However, the moot question which arises for consideration is “*When does the period of limitation commences ?*”. The answer to this issue is rooted in Section 470 of the Cr.P.C., which is reproduced hereinafter, inasmuch as, this Section

prescribes “exclusion of time in certain cases”.

“470. Exclusion of time in certain cases.—(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

*Explanation.—*In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender—

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.”

16. Since Sub-section 4(b) of Section 470 of the Cr.P.C. speaks in volume that, in computing the period of limitation, the time during which

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the offender has avoided his arrest by absconding or concealing himself shall be excluded, therefore, the embargo imposed upon the Court by Section 468 of the Cr.P.C. has to be read in conjunction with Section 470 of the Cr.P.C.

17. In view of what has been discussed hereinabove, since the petitioner, who, pursuant upon his release on parole on 21.08.2009, failed to surrender, rather absconded from authority of law for an elongated period of 13 years, until he was arrested on 09.05.2023, therefore, the period during which the petitioner absconded or concealed himself has to be excluded while computing the period of limitation in registration of the impugned FIR, which has been registered on 12.05.2023, i.e. immediately post the arrest of the petitioner. Consequently, the star argument of the learned counsel for the petitioner pales into insignificance, inasmuch as, there is no bar upon the Court to take cognizance of the impugned FIR, which has been registered within limitation.

18. Now, in order to negate the second argument of the learned counsel for the petitioner, it is deemed vital to first understand the basic object behind declaring a person as “Proclaimed Offender/Person”, and, to understand the legislative intent behind insertion of Section 174-A in the IPC, thereby making the non-appearance of a person, in response to the proclamation under Section 82 of the Cr.P.C., a substantive offence.

19. The legislative intent and the basic object behind issuance of proclamation/declaring a person as proclaimed offender, is to create more deterrence, thereby preventing the said person from scuttling the investigation, besides preventing vanishing of valuable evidence. The following are some of the repercussions attached to being a “Proclaimed

Offender”:-

- (a) Any citizen of India can make an arrest against the “Proclaimed Offender”;
- (b) The passport of the “Proclaimed Offender” is seized and is prohibited from leaving the country;
- (c) A “Proclaimed Offender” is disentitled to seek pre-arrest bail by invoking the provisions of Section 438 of the Cr.P.C., as held by the Hon’ble Supreme Court in “**Prem Shankar Prasad v. State of Bihar**”, 2021(4) R.C.R. (Criminal) 598; “**State of Madhya Pradesh v. Pradeep Sharma**”, 2014(1) R.C.R. (Criminal) 269; “**Abishek v. State of Maharashtra**”, 2022(3) R.C.R. (Criminal) 194.

20. Though the learned counsel for the petitioner submits that, upon arrest of the petitioner, the operation of the proclamation issued against him ceases to exist, however, to the considered mind of this Court, the substantive offence, as provided under Section 174-A of the IPC yet survives, inasmuch as, the failure of the petitioner to, despite issuance of warrant and his consequent declaration as “Proclaimed Offender”, itself is a punishable offence. Therefore, despite arrest of a “Proclaimed Offender”, he is yet amenable for being prosecuted under Section 174-A of the IPC, and as such, the second argument of the learned counsel for the petitioner also fails, however, the other disqualification attached with declaration as “Proclaimed Offender/Person” may have subsided.

21. The final argument of the learned counsel for the petitioner rests upon there being inordinate delay in registration of the impugned FIR, inasmuch as, it has been registered after delay of 13 years. However, this argument also does not find favour with this Court, inasmuch as, when the petitioner kept absconding or concealing himself from the authority of law for 13 years, therefore, the registration of an FIR under Section 174-A of the IPC, on the date when a person is declared as “Proclaimed Offender”, would

be futile. This reasoning can be understood from the hereinafter discussed example. Supposedly, a person was declared as “Proclaimed Offender” in the year 2010, as has happened in the instant case, whereupon, the police immediately registered an FIR under Section 174-A of the IPC, however, the said person could not be arrested for one or the other reason, then it would lead to initiation of a fresh process for declaring the said person as “Proclaimed Offender” in the said FIR registered under Section 174-A of the IPC, which cannot be construed to be the intent of the legislation. In this way, when the intent of the legislation is not the above, therefore, the impugned FIR has rightly been registered post the arrest of the petitioner/a “Proclaimed Offender”. The petitioner cannot be allowed to reap the fruits *qua* the fault on his part, who absconded and concealed himself from authority of law for 13 years.

22. It is important to note here that since the petitioner has not challenged the order dated 24.05.2010, wherethrough he has been declared as “Proclaimed Offender”, therefore, this Court refrains from making any comments upon the validity of this order. However, liberty is reserved to the petitioner to raise this issue before the learned trial Court at an appropriate stage.

23. For all the reasons (*supra*), this Court does not find any merit in the instant petition and the same is accordingly **dismissed**.

November 22, 2023

devinder

(KULDEEP TIWARI)

JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No