

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 27 OF 2024

Dhiraj Vasant Patil

...Applicant

Versus

The State Of Maharashtra

...Respondent

Kanchanpurkar Gautam Tatoba Advocate for Petitioner.

Mr. Arfan Sait, APP for Respondent-State.

Mr.S.S. Amberkar, Inspector, Palghar is present.

CORAM : PRAKASH D. NAIK, J.

DATE : 16th JANUARY, 2024

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P.C.:-

1. The applicant has challenged the order dated 22nd November 2023 passed by learned JMFC, Palghar in FIR No. 220 of 2023 dated 12th July 2023 registered with Palghar Police Station.
2. The offences are registered under Section 272, 273, 420, 481, 482, 483, 486, of Indian penal Code, 1860 and Section 65(A)(B)(C)(D)(E)(F), 81, 83, 90, 98 of Maharashtra Prohibition Act, 1949.
3. Investigating Agency preferred an application dated 30th October 2023 before the learned JMFC seeking issuance of warrant against the applicant as he is not available for the purpose of investigation.
4. Learned Magistrate vide order dated 22nd November 2023 observed that, the conduct of the accused shows that he is concealing himself or

avoiding his arrest and hence, issue proclamation under Section 82 of Cr.P.C.

5. Learned Advocate for applicant submitted that, the impugned order is illegal and contrary to Section 82 of Cr.P.C. The learned Magistrate had directed issuance of proclamation without following the procedure contemplated under Section 82 of Cr.P.C.. The said provision indicate that, before issuance of proclamation, the Court is required to issue proclamation against the accused if non-bailable warrant issued against accused could not be executed. However, without issuance of warrant, the Court proceeded to issue proclamation.

6. Learned APP submitted that, the applicant is involved in several cases. About 30 cases were registered against him. He is absconding in four cases registered vide C.R. Nos. 233 of 2022, 100 of 2023, 120 of 2023 and 220 of 2023. Since, the applicant was not available, application was preferred before the Court for issuance of warrant on the ground that, the applicant is avoiding arrest. However, the learned Magistrate had issued the proclamation.

7. Section 82 of Cr.P.C. reads 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 specific 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 home-stead 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.”

8. On perusal of the aforesaid provisions it is implicit that, the proclamation can be issued against any person against whom warrant has been issued by the Court and that he has absconded or is concealing himself so that such warrant cannot be executed. However, in the present case, the learned Magistrate had exercise the powers under Section 82 of Cr.P.C. though the Investigating Agency had preferred an application for issuance of warrant in compliance of Section 82 of Cr.P.C.

9. Considering the aforesaid circumstances, impugned order can be set aside by remanding the matter back to the trial Court to enable the court to

pass appropriate order in accordance with law on the application preferred by Investigating Agency.

ORDER

- i. The Investigating Agency is permitted to file fresh application for issuance of non-bailable warrant against the applicant.
- ii. In the event, such application is preferred, the learned Magistrate shall decide the said application in accordance with law.
- iii. Application stands disposed off.
- iv. It is made clear that, this court has not adjudicated upon the merits of the case.

(PRAKASH D. NAIK, J.)