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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-7485-2024****Date of Decision: 29.02.2024**

Makhan Lal

...Petitioner

vs.

State of Punjab and another

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat**Present :** Mr. Dhananjay Mittal, Advocate
for the petitioner.

Mr. M.S.Bajwa, Deputy Advocate General, Punjab.

Mr. Gurmej Singh Bhinder, Advocate
for the complainant.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the order dated 04.05.2022 (Annexure P-3), passed by the Court of Judicial Magistrate 1st Class, Nawanshahr, whereby, the petitioner has been declared as proclaimed offender.

2. Learned counsel for the petitioner contends that in the present case, one FIR No.214 dated 18.12.2000 under Section 420 IPC, Police Station Banga, District Nawanshahr (Annexure P-2) was ordered to be registered against the present petitioner. Learned counsel further contends that it was a dispute of civil nature, still the FIR was wrongly got registered by the complainant against the present petitioner. Learned counsel further contends that the petitioner was never served with the summons/warrants and was wrongly declared as a proclaimed offender on 04.05.2002 in violation of the provisions of Section 82

Cr.P.C. As per the provisions of Section 82(4) of Cr.P.C., no person can be declared as a 'proclaimed offender' for commission of offence under Section 420 IPC and the impugned order is liable to be set aside by this Court on this short ground alone. He further contends that in the present case, a compromise has been effected between the parties and a compromise deed alongwith the affidavit of the complainant have been annexed as Annexure P-5 with the main petition. He further contends that since the substantive offence has been compromised between the parties, the continuation of the proceedings, in view of the impugned order dated 04.05.2002 (Annexure P-3), would be an abuse of the process of the Court.

3. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner had intentionally not appeared before the trial Court for several months and is not entitled for any relief. He had the knowledge with regard to the pendency of the proceedings against him, however, he chose not to appear before the trial Court.

4. Learned counsel appearing on behalf of the complainant submitted that he has no objection, in case the impugned order dated 04.05.2002 is set aside by this Court.

5. I have heard learned counsel for the parties and perused the record.

6. In fact, the petitioner has been wrongly declared to be a proclaimed offender in the present case. As per Section 82(4) Cr.P.C., where a proclamation published under Sub-Section(1) is in respect of a person/accused of an offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459, 460 of IPC and such person

fails to appear at a specified place and time required by the proclamation, the Court may, after making such inquiry as it things fit, pronounce him a proclaimed offender and make a declaration to that effect.

7. In the present case, the petitioner was being prosecuted for the offence punishable under Section 420 IPC and the said offence does not find mention in Section 82(4) Cr.P.C.

8. This Court has held in the matter of **CRM-M-34328-2022(O&M)** titled as **“Rahul Dutta Vs. State of Haryana”** as follows:-

“Till the amendment by Act No.25 of 2005, proclamation was being done in respect of a person against whom a warrant has been issued and who has been either absconding or concealing himself to evade the execution of warrants but by way of Act No.25 of 2005, in consonance with Section 40(2)(ii), sub-section (4) is made a part of Section 82 Cr.P.C.

The offences mentioned in Section 82(4) Cr.P.C. are of recurring nature. All the persons, who are absconding or concealing themselves to evade execution of warrants of arrest, could be proclaimed persons but they could be declared a “proclaimed offender” only under the provisions of the IPC which are mentioned in Section 82(4) Cr.P.C. There is stark distinction between a proclaimed person and a proclaimed offender and for that reason, there is a difference of punishment provided under Section 174-A IPC as it provides imprisonment which may extend upto three years or with fine or with both regarding a person who has been proclaimed in terms of Section 82(1) Cr.P.C. and the imprisonment which may extend upto seven years and also with fine in respect of a person who is declared a “proclaimed offender” under Section 82(4) Cr.P.C.

I have also minutely examined those sections of IPC mentioned in Section 40(2)(ii) Cr.P.C. and have found that

Sections 435, 450 and 457 IPC are not mentioned in Section 82(4) Cr.P.C., whereas Section 364, 367, 400 and 459 IPC are additionally mentioned therein.

Learned counsel for the petitioner has also argued that Sections 83 to 86 Cr.P.C. deal with the proclaimed person and provide a complete procedure with regard to the attachment of his property but it does not deal with a person who has been declared to be a “proclaimed offender”.

Thus, in view of the aforesaid discussion, I am of the considered opinion that the terms “proclaimed person” and “proclaimed offender” have different connotations. A person who is evading the execution of warrants of arrest issued under the particular Sections of the IPC which are mentioned in Section 82(4) Cr.P.C., can only be declared to be a proclaimed offender and the persons under the other provisions of the IPC and the laws, can be declared to be a proclaimed person in terms of Section 82(1) Cr.P.C.”

9. In view of the above discussion and the law laid down by this Court in the matter of **Rahul Dutta’s Case (Supra)**, the petitioner was wrongly declared as a proclaimed offender in the present case.

10. In view of the findings recorded above, the present petition is liable to be set aside and the impugned order dated 04.05.2002 (Annexure P-3), passed by the Court of Judicial Magistrate 1st Class, Nawanshahr, along with all consequential proceedings arising therefrom are hereby ordered to be quashed.

29.02.2024.
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(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No