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In the High Court of Punjab and Haryana at Chandigarh

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CRM-M-32932-2024 (O&M)
Date of Decision: July 12, 2024

PRATEEK RAO

.....PETITIONER

VERSUS

M/S A.K.J PROPERTIES PVT LTD

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rajesh Lamba, Advocate for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

This is a petition under Section 482 Cr.P.C. for quashing of order dated 30.05.2024 (Annexure P-7) passed by learned Judicial Magistrate Ist Class, Gurugram in case No.NACT/77022/2023 dated 25.05.2023.

2. Learned counsel for the petitioner contends that the petitioner has duly moved an application for exemption from personal appearance which was filed on 07.10.2023 and the same was allowed and the case was adjourned to 04.11.2023. On 04.11.2023, again an application for exemption from personal appearance was filed which was declined and the presence of the accused was ordered to be secured through Warrants of arrest for 18.12.2023. It is asserted on behalf of the counsel for the petitioner that the petitioner was suffering from fever and a medical certificate was attached with the application.

3. The trial Court observed that the reasons mentioned in the application does not appear to be convincing and it appears that the exemption

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application has been moved only for the purpose of delaying the trial as is evident from the order dated 04.11.2023 (Annexure P-4).

4. On 18.12.2023, through proclamation warrants under Sections 82/83 Cr.P.C. were issued for 30.05.2024 with a further direction that serving Constable to come present before the trial Court on 30.04.2024 for recording of statement regarding the publication/affixation of proclamation warrants.

5. Learned counsel for the petitioner would refer to a part in that order to a highlighted fact that the petitioner was never served with the said warrant of arrest, since it is recorded in the order that he is not residing at the address but issuance of warrant was furnished to one Vijay to whom the petitioner is not associated in any manner and even is not aware of identity of that person namely Vijay.

6. With these arguments, the petitioner has assailed the order dated 30.05.2024 (Annexure P-7) vide which he has been declared proclaimed person and notice issued under Section 83 of Cr.P.C. for attachment of property and the matter is fixed for 11.09.2024 for furnishing details of property of petitioner/accused.

7. Be that as it may, it appears that proceedings by the trial Court had been conducted in haste though declining the exemption application may not be suffering from any illegality or perversity but issuance of proclamation has not been conducted in the manner as prescribed under Section 82 Cr.P.C. which is reproduced hereunder:-

“(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.

(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 Sub-Section (1)."

8. According to Section 82 of the Criminal Procedure Code, a proclamation may be issued against an individual by the Court if it is reasonably believed that the person for whom a warrant has been issued has absconded or is hiding, making it impossible for the warrant to be carried out.

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The trial Court itself has recorded in order dated 18.12.2023 that the petitioner is not residing at that address and one to observe making any further efforts to get the address for execution of arrest of warrant that he is intentionally changed the address to evade service which is highly improbable. This Court further to observe that the trial Court lacks such mechanism to get the address of the petitioner and merely relying on an information furnished to an unknown person namely, Vijay, whose identity before this court is doubtful, has issued summons through proclamation warrants u/s 82/83 Cr.P.C. and has now called for the list of property initiated proceedings under Section 82 Cr.P.C. is unjustified.

9. In the light of the above, I find that order dated 30.05.2024 (Annexure P-7) passed by the Judicial Magistrate Ist Class, Gurugram in case No.NACT/77022/2023 dated 25.05.2023 is bad in law and not adhere to the procedure of Section 82 Cr.P.C. and the same is hereby quashed.

10. The petition stands allowed, in the aforesaid terms. Pending application shall stand disposed of accordingly.

(SANDEEP MOUDGIL)
JUDGE

July 12, 2024
A.Kaundal

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