

CRM-M-50987-2023

Date of Reserve:19.01.2024

Date of Decision:29.01.2024

Jivesh Singh Chawla and Anr.

...Petitioners

Vs.

Union Territory Chandigarh and Anr.

...Respondents

Coram : Hon'ble Mr. Justice N.S.ShekhawatPresent: Mr. J.K Singla, Advocate
for the petitioner.

Mr. Rajiv Vij, Additional P.P. for U.T Chandigarh.

Mr. Harnoor Singh, Advocate
for respondent No.2.

N.S.Shekhawat J.

1. The petitioner had filed the present petition under Section 482 Cr.P.C with a prayer to quash the impugned order dated 12.12.2022 (Annexure P-5) passed by the Court of Judicial Magistrate First Class, Chandigarh, whereby the petitioners have been declared to be a proclaimed persons in a case arising out of FIR No.276 dated 11.08.2019, under Sections 379,411,34 of IPC Registered at Police Station Sector-39, Chandigarh (Annexure P-3). A further prayer has been made with a prayer to quash the FIR No.214 dated 20.12.2022 under Section 174-A of IPC, registered at Police Station Sector-39, Chandigarh (Annexure P-6) and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioners contend that FIR No.276 dated 11.08.2019, under Sections 379, 411, 34 of IPC, Police Station Sector-39 Chandigarh was ordered to be registered against unknown persons. During the

course of investigation, the names of both the petitioners were also involved with the allegations that the stolen vehicle belonging to the complainant/respondent No.2 were recovered from the possession and they were arrested. Thereafter, the petitioners were ordered to be released on bail on 10.02.2020 and the matter remained pending before the Trial Court. Learned counsel further submits that during Covid-19, pandemic, the matter was taken up before the Trial Court. Ultimately, vide the order dated 24.11.2021, the Trial Court ordered the summoning of both the petitioners through non-bailable warrants for 02.02.2022. On 02.02.2022, the non-bailable warrants issued against the petitioners were received back unexecuted. Even it was reported on the summons dated 25.11.2021 that the warrants were received by the concerned police officials on 29.01.2022 and since the date of hearing was fixed on 02.02.2022, warrants could not be executed. Again on 17.04.2022, the warrants were issued for the appearance of the accused on 05.07.2022. Again it was reported by the concerned official that he had gone to execute the warrants, but the houses were found to be closed. It was reported that the petitioners were not available at home and their houses were found locked. Thereafter, vide the order dated 05.07.2022, the case was adjourned to 06.10.2022. Again on 06.10.2022 and 31.10.2022, no efforts were made by the prosecution to serve the present petitioners at their address and without serving the petitioners, vide the impugned order dated 12.12.2022, the petitioners were ordered to be declared as proclaimed offenders. After passing of the impugned order dated 12.12.2022 (Annexure P-5); FIR No.214 dated 20.12.2022, under Section 174-A of IPC, Police Station Sector-39, Chandigarh (Annexure P-6) was ordered to be registered against both the petitioners. The petitioners have filed the present

petition with a prayer to quash the impugned order dated 12.12.2022 (Annexure P-5) and FIR No.214 under Section 174-A of IPC, registered at Police Station Sector-39, Chandigarh (Annexure P-6) and all subsequent proceedings arising out therefrom on the ground that the petitioners were never served personally or through family members, which is evident that from the reports of non-bailable warrants. Further during the pendency of the present FIR, the matter was amicably resolved between the parties and the parties had entered into a compromise with each other.

3. The submissions made by the petitioners have been opposed by the learned State counsel on the ground that the petitioners had intentionally not appeared before the Trial Court and are not entitled to the relief as prayed in the instant petition.

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

5. Section 82 of the Cr.P.C provides for the proclamation for the persons absconding from the process of law and the same has been reproduced below:-

“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.”

However, by way of Section 12 of Act No.25 of 2005, subsections (4) and (5) were also inserted in Section 82 Cr.P.C. w.e.f. 23.06.2006 vide notification No.S.O.923(E) dated 21.06.2006, which reads as under:

“(4) Where a proclamation published under subsection (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).]”

6. From a bare perusal of the abovesaid provision, it is clear that in case, the Court has reasons to believe that any person against whom a warrant had been issued by it, had absconded or was concealing himself so that such warrant could not be executed, such Court might 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. In the present case, the warrants were sent for the service of both the petitioners. However, from a perusal of reports on warrants(Annexure P-7), it is evident that either the official did not go at the place of residence of the petitioners due to any insufficiency of time or the house was closed and no efforts were made to serve the petitioners at the correct address. Even, the proclamation was issued by the Court without serving the petitioners. Thus, it is apparent that the mandatory provision of Section 82 of Cr.P.C was not complied and the proclamation was wrongly issued by the Trial Court. Even otherwise, the parties have not only buried their hatchet, but also leaving together for the last several months. Thus, it is apparent that the witnesses are not likely to depose against the petitioners in the criminal trial as well.

7. Thus, the impugned order dated 12.12.2022 (Annexure P-5) passed by the Court of Judicial Magistrate First Class, Chandigarh, whereby the petitioners have been declared to be a proclaimed persons in a case arising out of FIR No.276 dated 11.08.2019, under Sections 379,411,34 of IPC Registered

at Police Station Sector-39, Chandigarh (Annexure P-3) and the FIR No.214 under Section 174-A of IPC, registered at Police Station Sector-39, Chandigarh (Annexure P-6) and all subsequent proceedings arising therefrom are hereby quashed.

8. Consequently, the petitioners are permitted to surrender before the Trial court/Area Magistrate/Duty Magistrate within a period of six weeks from today and on their surrender, they shall be admitted to bail by the concerned Court on their furnishing bail bonds/surety bonds to the satisfaction of the concerned Court. The Court, which admits the petitioners to bail, shall also be at liberty to impose such reasonable conditions, as provided by law. In case, the petitioners does not surrender within a period of six weeks from today, the present petition shall be deemed to be dismissed by this Court.

9. The petition shall disposed off in above terms.

29.01.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No