



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 7th November, 2024**

+ CRL.M.C. 1039/2023, CRL.M.A. 3984/2023 & CRL.M.A.
21419/2023
BALJEET KAURPetitioner

Through: Mr.D.K.Singh and Mr.Deepak
Shukla, Advocates

versus

THE STATE NCT OF DELHI AND ANR.Respondents

Through: Mr.Yudhvir Singh Chauhan, APP for
the State alongwith SI Satender
Kumar Arya

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 482 of the Criminal Procedure Code, 1973 (hereinafter “CrPC”) [now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter “BNNS”)] has been filed on behalf of the petitioner seeking quashing of the proceedings initiated under Section 82 of the CrPC (now Section 84 of the BNSS) and quashing of orders dated 26th March, 2022 and 4th June, 2022 passed by the learned MM (NIA)-02, South West District, Dwarka Courts, passed in the Case No. 31974/2018, as well as quashing of FIR bearing no. 0627/2022 registered at Police Station - Geeta Colony for offence punishable under Section 174-A of the Indian Penal Code, 1860 (hereinafter “IPC”) [now Section 209 of the Bharatiya

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Nyaya Sanhita, 2023 (hereinafter “BNS”)] .

2. The brief facts that led to the filing of the instant petition are as follows:

- a. It is stated that the petitioner took a loan from the respondent no. 2 and she failed to repay the same. Pursuant to which the respondent no. 2 sent a legal notice dated 4th June, 2018, thereby, asking her to regularize the EMI. Thereafter, the respondent no. 2 sent a legal demand notice dated 6th September, 2018 to the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter “NI Act”).
- b. Subsequently, the respondent no. 2 filed a complaint case bearing No. 31974/2018 under Section 138 of the NI Act and notice of complaint was issued to the petitioner on 3rd October, 2018, however, she did not appear before the Court concerned/learned Trial Court. Pursuant to the same, the Court concerned directed to issue summons to the petitioner through SHO concerned on 1st December, 2018.
- c. Since the petitioner did not appear even after the service of summons, the Court concerned issued bailable warrants on 18th March, 2021 and 25th September, 2021 against the petitioner.
- d. Due to non-appearance of the petitioner even after the issuance of bailable warrants, the Court concerned issued non-bailable warrants against her on 18th January, 2022,





following which the Court concerned initiated proceedings against the petitioner under Section 82 of the CrPC vide order dated 26th March, 2022.

- e. Consequent to the above, vide order dated 4th June, 2022, the petitioner was declared proclaimed offender by the Court concerned and the SHO concerned was directed to trace the petitioner and her property.
- f. Thereafter, the SHO concerned submitting its report stating thereby that the property is verified and further submitted before the Court concerned that the petitioner is the owner of property bearing address – H. No. 03/1, Block – 03, Geeta Colony, Delhi (hereinafter “premises”).
- g. It is pertinent to mention here that all the aforesaid notices issued by the respondent no. 2 along with the notice of complaint, summons, bailable warrants and non – bailable warrants issued by the Court concerned on the above-mentioned address were returned as unserved as per their service reports.
- h. The Court concerned then directed the SHO concerned to register the FIR under Section 174-A of the IPC. Pursuant to the said direction, an FIR bearing no. 0627/2022, dated 19th December, 2022 was registered at Police Station – Geeta Colony, Delhi for offence punishable under Section 174 – A of the IPC against the petitioner. Thereafter, the petitioner





moved an application before the Court concerned seeking anticipatory bail which was dismissed vide order dated 6th February, 2023.

i. Aggrieved by the same, the petitioner has filed the instant petition.

3. Learned counsel appearing on behalf of the petitioner submitted that the impugned order dated 26th March, 2022 vide which the learned Trial Court initiated proceedings against the petitioner under Section 82 of the CrPC and the impugned order dated 4th June, 2022 vide which the petitioner was declared proclaimed offender are bad in law and liable to be set aside as the same have been passed erroneously, and without taking into consideration the entire facts and circumstances. It is further submitted that even the aforementioned FIR has been registered erroneously and the same is liable to be quashed.

4. It is submitted that the respondent no. 2 issued a loan recall notice on 1st August, 2018. Subsequently, on 6th September, 2018, the respondent no. 2 sent a legal demand notice under Section 138 of the NI Act at the aforesaid premises. It is submitted that neither the recall notice nor the notice under Section 138 of the NI Act was served upon the petitioner.

5. It is submitted that subsequent to the above, the respondent no. 2 filed a complaint under Section 138 of the NI Act, citing the petitioner's address as H. No. 03/1, Block – 03, Geeta Colony, Delhi, and a notice regarding the complaint was duly issued by the learned Trial Court at the same address/premises.





6. It is submitted that the complainant, i.e., the respondent no. 2 herein submitted before the learned Trial Court that the petitioner is the landlord of the aforesaid premises. The learned Trial Court, without verifying the same, issued bailable and non – bailable warrants against the petitioner.

7. It is submitted that none of the summons, bailable warrants and the non-bailable warrants were duly served upon the petitioner, as the petitioner was not a resident at the said premises and had ceased to reside therein since 31st December, 2015. Furthermore, all the summons and warrants were returned with the report that the petitioner had left the address.

8. It is submitted that the order dated 18th January, 2022 passed by the learned Trial Court duly records that the bailable warrants issued against the petitioner were received back '*unserved*' as "*no such person is residing at the said address*".

9. It is submitted that Annexure A-2 appended to the instant petition is a sale deed dated 31st December, 2015 with respect to the aforesaid premises which has been executed by the petitioner in favour of one Mr. Adesh Rai. It is also submitted that the petitioner also sold the remaining portion of the aforesaid premises through a registered sale deed in the year 2017.

10. It is further submitted that as the petitioner has not been residing at the aforesaid premises since the year 2015, therefore, any notice, summons, bailable warrants, or non – bailable warrants, or even the process under Section 82 of the CrPC issued against the petitioner at the aforesaid premises have not been duly served upon the petitioner. Thus, it is evident that the petitioner was oblivious to the proceedings initiated against her as the





petitioner had no knowledge of the said proceedings which *per se* is a *sine qua non* to proceed under Section 82 of the CrPC.

11. It is submitted that despite the non – bailable warrants being received with a report that the petitioner has left the address; the learned Trial Court erroneously formed an opinion that she is avoiding service and proceeded to issue process under Section 82 of the CrPC following which the petitioner was declared as an absconder vide order dated 4th June, 2022 which is against the settled principles of law.

12. It is submitted that the learned Trial Court declared the petitioner as absconder in a negligent manner by overlooking the service report on summons, bailable and non – bailable warrants which stated that the petitioner is not residing at the premises and has left the same, therefore, the proceedings are liable to be quashed.

13. It is submitted that the learned Trial Court, in a mechanical and routine manner, issued directions for registration of FIR without going through the service reports.

14. Therefore, in view of the foregoing submissions, it is submitted that prayed that the instant petition may be allowed and the reliefs be granted as prayed for.

15. *Per Contra*, the learned counsel for the respondent no. 2 vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed being devoid of any merits.

16. It is submitted that the petitioner's claim of having sold the subject premises in the year 2015 is incorrect and misleading. It is submitted that the





petitioner, by her own admission in statements made to the respondent, claimed ownership and occupancy of the subject premises up until at least November, 2017, thereby, contradicting her stance that the premises were sold to one Mr. Adesh Rai in the year 2015.

17. It is submitted that even if the petitioner executed a registered sale deed in favor of one Mr. Adesh Rai on 31st December, 2015, the sale involved only a portion of the ground floor (18.12 sq. meters) of the total 41.80 sq. meters area, thereby, leaving substantial portions of the property unaccounted for.

18. It is further submitted that the petitioner's KYC and title documents, along with her self-attested undertaking as well as the loan documents, consistently reflect her as the resident of the subject premises.

19. It is further submitted that the respondent no. 2 remains in possession of the original title documents provided by the petitioner in November, 2017. Moreover, any purported sale without these original documents could only have been done by deception or fraud.

20. It is submitted that the learned Trial Court has passed the impugned orders in accordance with the law and there is no illegality of any kind thereto. Further, the learned Trial Court rightly directed for the registration of the FIR since the petitioner has been deliberately avoiding the proceedings initiated against him under the NI Act.

21. Therefore, in view of the foregoing submissions, it is submitted that prayed that the instant petition may be dismissed.

22. Thereafter, the learned APP appearing on behalf of the State also





opposed the instant petition submitting to the effect that the impugned orders have been passed in accordance with the law and the FIR against the petitioner has been registered in terms of the provisions of Section 82 of the CrPC as the records reveal that the petitioner had failed to appear in the proceedings initiated against him under the NI Act. Therefore, there being no merits in the instant petition, the same may be dismissed.

23. Heard the learned counsel appearing on behalf of the parties and perused the material placed on record.

24. It is the case of the petitioner that the learned Trial Court erred in passing the impugned orders and also erred in directing the SHO concerned for registration of FIR against the petitioner. It has been submitted that the learned Trial Court failed to appreciate that the petitioner has not been residing at the aforesaid premises since the year 2015 and has sold the entire property, final portion of which was sold in the year 2017. It has also been submitted that as per the service report of notices, summons, bailable and non – bailable warrants, and the process was received as '*unserved*' with report as '*petitioner was not residing at the address*' and '*left the address*'. It has been contended that despite the said service report, the learned Trial Court proceeded to issue process against the petitioner under Section 82 of the CrPC and further passed directions for registration of FIR under Section 174-A of the IPC. The said actions of the learned Trial Court is erroneous and liable be set aside.

25. Before advertng to the merits of the instant case, it is imperative for this Court to understand the principle pertaining to 'proclaimed offender.





26. Section 82 of the CrPC allows a Court of law to issue a proclamation if it believes that an accused person has absconded, concealed himself, or committed a serious offence. However, the Court must be satisfied that the accused is absconding and deliberately avoiding proceedings.

27. Summarily stated, the aforesaid provision mandates that in case the accused absconds or conceals himself so that the warrants cannot be executed, written proclamation be issued requiring him to appear at a specific place and at a specific time not less than 30 days from the date of publication. The procedure as detailed under Section 82 of CrPC reads as under:

“Section 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.

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 Penal Code, 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)."

28. Upon perusal of the aforesaid contents, it is made out that the statutory provisions of Section 82 of the CrPC also provides indispensable safeguard to protect an unaware person to apprise him that he is wanted in a criminal case to enable him to surrender to the process as required by the law.

29. The said provision lays down rigorous conditions of the manner in which the proclamation has to be published before a person can be





pronounced a proclaimed offender. These safeguards find its basis on the premise that every person who is not immediately available cannot be characterized as an absconder/proclaimed offender.

30. The phrase “*reason to believe*” in Section 82 of the CrPC carries a greater weight. The intent of the said provision connotes that there should be materials before the Court to have some cogent reasons to believe as such. In the absence of any substantive material, it cannot be said that the Court had any reason to believe that the accused person has either absconded or concealed himself.

31. The Hon’ble Supreme Court has time and again underscored the necessity of awaiting and judicially scrutinizing the report of the executing officer prior to issuing an order notifying the concerned as a proclaimed offender.

32. Furthermore, under Section 82 of the CrPC, the Court issuing the proclamation must record his satisfaction that the accused had absconded or concealed himself, and any order of proclamation bereft of cogent reasoning cannot be sustained under law.

33. The term “*absconding*” does not necessarily entail a change of location. The same can be defined as an act of evading the due process of law, thus, it is immaterial whether an individual departs from a particular place or remains there.

34. If an individual conceals themselves to avoid arrest and judicial proceedings, they are deemed to be absconding, however, an absent person should not be too readily assumed to be an absconder/proclaimed offender





without due enquiry and notice. The same has been also held by the Hon'ble Supreme Court in *Kartarey v. State of U.P.*, (1976) 1 SCC 172 and recently in *Srikant Upadhyay v. State of Bihar*, 2024 SCC OnLine SC 282.

35. Now adverting to the facts of the instant case.

36. This Court has meticulously perused the entire material placed on record including the impugned orders, the FIR and various other orders passed by the learned Trial Court in the complaint case along with the processes, summons, warrants, notice under Section 82 of the CrPC etc. and their service reports which is part of the Trial Court's Record.

37. It is observed that the learned Trial Court has failed to appreciate the fact that none of the notices, summons and warrants were duly served upon the petitioner. In light of the said fact, it is apparent that the petitioner was unaware of the all the notices, summons and warrants as well as the proceedings initiated under Section 138 of the NI Act against her. Therefore, the question of intentionally and deliberately evading the service or process of Court and summons does not arise which is a pre-requisite in terms of the settled law i.e., under Section 82 of the CrPC.

38. It appears that the learned Trial Court has not given due consideration to the two statements of Mr. Jaspreet Singh and Mr Sachin Sharma respectively, recorded by the police, one claiming himself as the owner of the 1st and 2nd floor in the aforesaid premises and the other disclosing that he purchased the one shop in the property from one Mr. Aadesh Rai and further disclosed that the petitioner herein has not been residing therein for the last 4-5 years.





39. This Court is of the view that the learned Trial Court's decision to declare the petitioner as an "absconder" appears to have been made without due consideration of the necessary factors that underpin such a serious decision.

40. The essence of declaring someone as a proclaimed offender under Section 82 of the CrPC rests not only on the physical absence of the accused but also on a careful evaluation of the intent to evade the legal process.

41. The absence of the petitioner from the address cited in the proceedings does not equate to an intentional effort on her part to avoid the process of law. Furthermore, the judicial records show that multiple summons and warrants were returned unserved, indicating a lack of proper service rather than a deliberate attempt by the petitioner to abscond. The Trial Court Record shows that even the process issued under Section 82 of the CrPC was not executed as per the service report thereto.

42. Moreover, the learned Trial Court failed to consider critical statements who confirmed the petitioner's absence from the address in question. The suggestion that the petitioner was the landlord of the property was presented without thorough verification as the record *prima facie* reveals that the premises in question, initially owned by the petitioner herein was later on sold in parts to various other persons. However, it is noted that as per the report of the SHO regarding the verification of premises, it is showed that the petitioner had bought some portion of the premises on 8th December, 2015. Here, it is also pertinent to mention that the petitioner has filed on record Annexure A-2 which is a sale deed dated 31st December, 2015





executed by the petitioner in favour of one Mr. Aadesh Rai.

43. In light of the evidence demonstrating that the petitioner had divested herself of the aforesaid premises years ago, it is clear that the learned Trial Court did not adequately assess whether the petitioner had any means of receiving the legal documents. Thus, the conclusion that the petitioner was intentionally avoiding the judicial process lacks substantial support and appears to be a decision made without application of judicial mind which lacks cogent reasoning.

44. The necessity for a clear demonstration of intent to evade the law has been underscored in various judicial precedents. For instance, the Hon'ble Supreme Court has time and again emphasized that a mere absence of an individual does not suffice to label him an absconder without evidence of some intention to avoid legal proceedings. The Hon'ble Court articulated that a person should not be presumed to be evading the law without clear evidence of such intent.

45. In addition, the learned Trial Court's reliance on the notion that the petitioner is avoiding service, despite the service report stating that the service is not completed as the petitioner has left the premises, demonstrates a failure to apply the settled principles of law. Thus, the impugned orders passed by the learned Trial Court and the direction to the concerned police to register FIR against the petitioner under Section 174-A of the IPC contravenes established legal principles which warrant a thorough examination of the facts before declaring someone as an absconder.

46. Here, it is appropriate to note that the Predecessor Bench of this Court





passed several orders, which are pertinent to the matter at this stage. Order dated 10th August, 2023 reveals that the petitioner complied with the earlier order dated 18th July, 2023 by handing over a demand draft of Rs. 1,50,000/- to the respondent no. 2. Pursuant to the same, the Predecessor Bench of this Court referred the instant matter to the Delhi High Court Mediation and Conciliation Centre to explore an amicable resolution.

47. Perusal of order dated 31st October, 2023 reveals that the Predecessor Bench of this Court recorded the settlement reached between the parties on 20th September, 2023. As per the terms of the settlement, the petitioner agreed to pay a total amount of Rs. 7,66,341/- to the respondent no. 2, out of which Rs. 1,50,000/- was already paid. The remaining Rs. 6,16,341/- was to be paid in four installments of Rs. 1,54,085/- on specified dates and the Investigating Officer of the aforesaid FIR was directed to refrain from taking coercive action against the petitioner until the next date of hearing.

48. Subsequently, order dated 19th February, 2024 was passed by the Predecessor Bench of this Court which records that the entire settlement amount had been paid to the respondent no. 2 by the petitioner.

49. In light of the facts and legal principles outlined above, this Court finds sufficient grounds to quash the proceedings initiated under Section 82 of the CrPC vide the impugned orders 6th March, 2022 and 4th June, 2022 passed by the learned MM(NIA)-02, South West District, Dwarka Courts, passed in the Case No. 31974/2018 as well as investigations and proceedings in FIR No. 627/2022, under Section 174-A of the IPC.

50. The Court also takes cognizance of the precedent established by the





Hon'ble Supreme Court which dictates that a mere absence from a particular location does not suffice to deem someone an absconder/proclaimed offender unless supported by material evidence of their intent to evade the judicial process. Consequently, this Court, in its discretion, deems it appropriate to quash both the proceedings under Section 82 of the CrPC and the FIR lodged thereto under Section 174-A of the IPC, to uphold the principles of natural justice and prevent further unnecessary hardship to the petitioner.

51. At this stage, it is pertinent to mention that the respondent has submitted that the petitioner had provided the address of the aforesaid premises during the process of obtaining loan. It has been submitted that if she had already sold the property and yet provided the said address stating it to be hers in the documents, the same amounts to concealment of facts. It has been further asserted by the respondent no. 2 that it has been in possession of the original documents of the property and henceforth, the petitioner's assertion regarding the selling of the property is fraudulent and baseless.

52. With respect to the aforesaid contention, this Court is of the opinion that the said objections are not relevant for the adjudication of the dispute pertaining to quashing of proceedings initiated under Section 82 of the CrPC and the FIR emanating therefrom and thus, the said disputes cannot be adjudicated herein as this Court is not the appropriate forum.

53. Upon examination of the material placed on record, this Court is of the view that the respondent no. 2 has settled the entire dispute amicably





with the petitioner without any pressure or coercion. As per the settlement, the respondent no. 2 has received the entire settled amount.

54. In the instant case, as stated above, the parties have reached on the compromise and amicably settled the entire disputes without any pressure and therefore, this Court is of the considered view that in view of the settlement, this Court should exercise its powers under Section 528 of the BNSS and quash the proceedings.

55. In view of the settlement arrived at between the parties and the conclusion on merits of the instant petition that the learned Trial Court erred in law by initiating proceedings under Section 82 of the CrPC against the petitioner, the following directions are passed by this Court:

- a. Impugned orders dated 26th March, 2022 and 4th June, 2022 passed by the learned MM(NIA)-02, South West District, Dwarka Courts, passed in the Case No. 31974/2018 are quashed.
 - b. FIR bearing no. 0627/2022 against the petitioner registered at Police Station - Geeta Colony for offences punishable under Section 174-A of the IPC and all the consequential criminal proceedings emanating therefrom are quashed.
56. Accordingly, the instant petition is allowed and stands disposed of.
57. Pending applications, if any, stands dismissed.
58. The order be uploaded on the website forthwith.

NOVEMBER 7, 2024
Dy/ryp/mk

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