



\$~

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

%

Reserved on: 21.11.2023
Pronounced on: 03.01.2024

+ **CRL.M.C.5815/2022 & CRL.M.A. 22873/2022**

YASH DEV SINGH SEJWAL Petitioner
Through: Mr. Kunal Anand, Ms. Richa
Kapoor and Ms. Esha Sharma,
Advocates

versus

THE STATE (GOVT OF NCT OF DELHI)
& ANR. Respondents
Through: Mr. Satish Kumar, APP for the
State

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C') has been preferred on behalf of the petitioner, seeking setting aside of impugned judgment dated 08.07.2022, passed by learned Additional Sessions Judge-03, Central, Tis Hazari Courts, Delhi, in Crl. Revision No. 33/2022, titled 'Yash Dev Singh Sejwal vs. The State (Govt. Of NCT Delhi)'; and consequently setting aside of orders dated 22.03.2005 and 05.02.2011, passed by learned Metropolitan Magistrate, North District, Delhi, in case FIR No. 146/2002, dated 27.05.2002,



registered under Sections 498A/420/406 of the Indian Penal Code, 1860 ('IPC'), at Police Station Civil Lines, New Delhi, and all other consequential coercive action issued against the petitioner herein.

BRIEF FACTS

2. The petitioner and the respondent no. 2/complainant were married on 23.10.2000, as per Hindu rites and ceremonies. A complaint was filed by the complainant against the petitioner and his family members, alleging therein that he had concealed factum of his previous marriage and also having a daughter from the petitioner, at the time of marriage. The petitioner and his family members had subjected the complainant to mental and physical cruelty for non-fulfillment of demand of dowry, and had also evicted her from her matrimonial home, as per allegations. The allegations against the petitioner were also regarding false representation regarding his nationality, citizenship and residence at the time of marriage. Accordingly FIR No. 146/2002, under Sections 498A/420/406 of IPC was registered on 27.05.2002. After investigation, chargesheet was filed against the petitioner and his family members on 22.03.2005.

3. Pursuant to filing of the chargesheet, learned Trial Court *vide* order dated 22.03.2005 had issued Non-Bailable Warrants (NBWs) against the petitioner. However, the NBWs could not be executed, leading to extradition proceedings against him, *vide* order dated 10.01.2006. However, the petitioner did not appear before the Court, and process under Section 82 of Cr.P.C. was initiated *vide* order dated 24.11.2010 by the learned Trial Court. After execution of



process under Section 82/83 of Cr.P.C., the petitioner was declared Proclaimed Offender, *vide* order dated 05.02.2011. Thereafter, the learned Trial Court framed charges against the petitioner's family members i.e. the co-accused persons, *vide* order dated 26.02.2011. Some accused persons were discharged by the learned Revisional Court.

4. The parents of the petitioner, who were also the co-accused, had unfortunately passed away in the year 2013. The learned Trial Court had examined as many as nine witnesses under Section 299 Cr.P.C.

5. Thereafter, the petitioner had filed CRL.M.C. 910/2020, titled as '*Yash Dev Singh Sejwal vs. State & Ors*' before this Court, and *vide* order dated 27.10.2021, this Court had directed the petitioner to approach the learned Trial Court for appropriate remedy. The relevant order of this Court, reads as follows:

"4. Therefore, it is clear that there is no Red Corner Notice issued and LOC proceedings have also not been initiated against the petitioner till date. In these circumstances, petitioner is not entitled to any relief in this regard. So far as PO proceedings are concerned, petitioner can move an application before the concerned trial court for appropriate remedy.

The application stands disposed of accordingly.

CRL. M.C. 910/2020 & CRL. M.A. 1982/2021

Since the petitioner has shown inclination of the petitioner to come to India within four weeks, till then no LOC proceedings be initiated and no Red Corner Notice be issued against the petitioner."



6. The petitioner had filed an application before the learned Trial Court seeking cancellation of NBWs which were issued against him *vide* order dated 22.03.2005, and setting aside of order dated 05.02.2011 *vide* which he was declared as 'Proclaimed Offender.' The learned Trial Court *vide* order dated 17.12.2021, was pleased to dismiss the said application, observing that the petitioner had been declared a proclaimed offender *vide* order dated 05.02.2011 which had attained finality, and the petitioner should approach a superior court for appropriate remedy. The relevant part of this order reads as under:

“The above exceptions are not attracted in the present case. Moreover, once the accused was declared a proclaimed offender *vide* order dated 05.02.2011, the order attained finality and is thus, hit by the bar under Section 362 Cr.P.C. Further, the Hon'ble High Court of Delhi, *vide* its order dated 27.10.2021, granted leave to accused No. 1 to avail an appropriate remedy but the appropriate remedy in the present case is assailing the order dated 05.02.2011 which can only lie before a Superior Court for the reasons mentioned above.

Accordingly, the present application moved on behalf of the applicant / accused No. 1 stands dismissed.”

7. Accordingly, the petitioner herein had approached the learned Sessions Court by way of a criminal revision petition against the aforesaid order, on the ground that the learned Trial Court had failed to return a finding on the basis of the facts, and had contended that petitioner is not accused of any offence mentioned under Section 82 (4) Cr.P.C., and therefore, he could not be declared a proclaimed offender. It was also contended that the petitioner was never served



with the summons of the case, and that a letter had been sent by the petitioner to the learned Trial Court, on 30.07.2019, disclosing his whereabouts and residence.

8. The learned Sessions Court, after hearing the parties, was pleased to dismiss the revision petition filed by the petitioner herein, on 08.07.2022. The relevant portion of the impugned judgment is extracted herein below:

16. The petitioner is accused of committing an offence under Section 498A/406/420 IPC. The said offences are not enumerated under Section 82 (4) Cr.P.C. Therefore, the petitioner could not have been declared as a proclaimed offender. This proposition of law is held by Hon'ble High Court of Delhi in **Sanjay Bhandari** (*supra*), as under:

"31. I am thus of the view that a person who is accused of offences other than the ones enumerated in section 82(4) and qua whom a proclamation has been published under section 81(1) would be a 'Proclaimed person' and not a deemed 'Proclaimed Offender'."

17. This Court does not find any merit in contention of Ld. Counsel for the petitioner that the Court did not observe procedural safeguard for issuance of NBW and consequent, proclamation against the petitioner.

18. The petitioner deliberately avoided the process of law despite having knowledge of the case.



19. It may be noted that the petitioner filed a petition, *vide* C.R. No. 564/2003, before Hon'ble High Court of Delhi on 07.08.2003 wherein he was directed to deposit 50% of the arrears of maintenance, as under:

"Notice to the respondent for the date fixed. Subject to the petitioner depositing 50% of the arrears of maintenance amount granted by the learned trial court, in the Court within four weeks, without prejudice to the pleas and contentions of the parties, the operation of the impugned order shall remain stayed. The amount so deposited by the petitioner shall not be allowed to be withdrawn by the respondent without the leave of the Court.

A copy of the order be given dasti to the counsel for the petitioner."

20. The petitioner did not comply the said order and eventually, the said petition was dismissed on 16.12.2003.

21. The extradition proceedings were initiated against the petitioner as he did not appear, either before the investigating agency or the trial Court. Hon'ble High Court of Delhi, *vide* order dated 19.01.2007 in W.P. (C) 12428/2004, observed, as under:

"The Status Report dated 16.01.2007 has been perused which shows that necessary steps have been taken before the Mahila Court. It is recorded in the Status Report that the extradition proposal cannot be taken up till such time as the charges are framed in the case, which are undisputedly yet to be framed. The competent court now being seized of the matter and the respondents taking action in this behalf, no further directions can be issued in this petition and it is expected that the competent court will examine the question of framing of charges expeditiously. Petition stands disposed of."



22. The petitioner sent a letter to the trial Court on or before 03.03.2009, as under:

"Finally I got divorce from Dutch court in The Hague on 25-03-2004, see document No. 7. She was also informed about it by registered post. She could never marry me because at the time of our marriage she was already married with another man and not actually divorced from him.

Since September 2004 I am living in Belgium, see address below.

At present it is financially not possible for me to visit India so herewith I request you to accept the divorce decision taken by the Dutch court, about which Kiran has been informed."

23. The petitioner entered into a settlement agreement with the complainant before Delhi High Court Mediation & Conciliation Centre on 17.09.2013.

24. The petitioner filed an application before the trial Court on 19.09.2013 for recalling of the impugned order wherein he had undertaken to appear before the trial Court. However, the said application was withdrawn on 03.01.2014. The relevant part of the said application is as under:

"6. That the accused / applicant is permanently settled in Belgium and genuinely / bonafidely intends to come to India and abide by terms of the settlement. The accused / applicant undertakes to appear before this Hon'ble Court as and when directed to do so.

PRAYER:

(d) give reasonable time to the accused / applicant to appear before this Hon'ble Court; and"



25. The petitioner neither adhered terms of mediation settlement dated 17.09.2013 nor appeared before the trial Court. On holistic assessment of the proceedings, as noted above, it is evident that the petitioner was aware of the present case. However, he neither appeared before the investigating agency nor before the trial Court. At this juncture, it would be relevant to note that in C. R. No. 564/2003 instituted on 07.08.2003 before Hon'ble High Court of Delhi, the petitioner has given his local address as H No. 24, Village Said Ul Ajiab, Mehrauli, New Delhi-110030. This is the same address where NBW and therefore, process under Section 82/83 Cr.P.C. were sought to be executed. The petitioner evaded process of law for more than 20 years. There is no infirmity in the issuance of NBW against him. In **Sanjay Bhandari** (*supra*), Hon'ble High Court of Delhi held, as under:

"33. In view of the above, order dated 08.01.2018 declaring the petitioner as a *proclaimed offender* is not sustainable and is accordingly quashed to the said extent. However, this would not affect the status of the petitioner as a *proclaimed person* and would be without prejudice to the action initiated against the petitioner for failure to appear in terms of the proclamation issued."

26. In that view, criminal revision petition filed by the petitioner challenging NBW issued against him, *vide* order dated 22.03.2005, is dismissed. However, criminal revision petition challenging order dated 05.02.2011 declaring him '*proclaimed offender*' is allowed to the extent that he is declared as '*proclaimed person*'.

9. Resultantly, the petitioner has preferred the present petition, before this Court. It is contended on behalf of petitioner, before this



Court, that the learned Trial Court had committed an error by not appreciating that the petitioner was never served any summons in the present FIR. On the other hand, after gaining knowledge of the present FIR, the petitioner had himself written a letter dated 20.02.2009 and another letter dated 30.07.2009, through his then advocate, to the learned Magistrate disclosing his whereabouts and residence. The learned Trial Court had also, vide order dated 24.11.2010, acknowledged the receipt of the aforesaid letter, in the judicial file. It is argued that despite knowledge of the last known address of the petitioner, the proceedings under Section 82 of Cr.P.C. were wrongly initiated vide order dated 22.01.2011. It is also contended that the service, as per the statement of the process server itself, was in total disregard to the provisions of Sections 82/83 of Cr.P.C. It is also stated that in the statement of the process server dated 05.02.2011, it is stated that the father of petitioner herein had informed him that the petitioner does not reside in the property bearing House No. 24, Village Said Ul Ajab, Post Mehrauli, New Delhi, and is residing in Belgium; and has disposed of all his movable and immovable properties.

10. Learned counsel for the petitioner also contends that the petitioner was informed that the complainant/respondent no. 2 herein was earlier married to one Mr. Ravi Choudhary and they were not legally divorced when the marriage between the petitioner and respondent no. 2 had been solemnized. It is also therefore, contended that the marriage between the petitioner and respondent no.2 is void and has no legal sanctity. It is also argued that upon contacting Mr.



Ravi Choudhary and his family, the petitioner and his father were handed over a written agreement dated 20.03.1999 supporting the claim that respondent no. 2 was earlier married to Mr. Ravi Choudhary and their marriage was not legally dissolved by a court of law. It is stated that only an agreement to dissolve the same was entered between them and the jewellery items of respondent no. 2 including the *mangalsutra* were returned to her. The copy of this document was not appreciated by the learned Trial Court.

11. It is also argued that the father of the petitioner had filed a Complaint Case No. 533164/2016, titled as '*Randhir Singh vs. Kiran & Ors.*', before the learned Magistrate for prosecuting respondent no. 2 and her family members for offences under Sections 417/494/495/120B of IPC; and the learned Magistrate was pleased to summon accused no. 1 to 3 therein (i.e. respondent no. 2 and her family members), for offences under Sections 417/494/495/120B of IPC. It is also submitted that *vide* order dated 26.06.2018, respondent no. 2 and her family members were discharged in CC No. 533164/2016; however, a revision against the said order was filed which was dismissed by the Revisional Court, and CRL.M.C. No. 886/2020 filed against the same by the present petitioner is pending for adjudication before this Court, wherein notice was issued *vide* order dated 17.02.2020.

12. It is also stated that by way of abundant caution, and without prejudice and independent to the above submissions, the petitioner on 14.02.2002, had filed a petition for divorce before the District Court, Hague, Netherlands, for dissolution of his marriage with respondent



no. 2 as he had got his marriage registered in Netherlands, being unaware of malicious intentions of respondent no. 2. It is stated that on receipt of notice for divorce from the Holland Court, respondent no. 2 had got registered a false and fabricated case being FIR No. 146/2002, under Sections 498A/420/406 of IPC, at Police Station Civil Lines, on 27.05.2002, against the petitioner and his family members in order to pressurize them not to unveil the fraud and cheating committed by respondent no. 2. It is also stated that respondent no. 2 did not appear before the Court at Holland i.e. Magistrate's Court, Sector Family and Juvenile Law, Gravenhage Court; and therefore an ex-parte order dissolving marriage was granted against respondent no. 2. It is stated that a copy of the said order was also communicated to respondent no. 2, and the divorce was got registered on 31.03.2004.

13. It is now stated on behalf of petitioner that the learned Magistrate was pleased to issue NBWs against the petitioner on 22.03.2005 despite the fact that he was never served with summons or notice relating to the subject FIR in the present case. It is also stated that a settlement was arrived at, between the parties, with the intervention of Mediation Centre, Delhi High Court, Delhi on 17.09.2013, wherein it was agreed that that the petitioner and respondent no. 2 shall take a divorce by mutual consent and that the petitioner had agreed to pay a sum of Rs. 8,00,000/- to respondent no. 2 as full and final settlement. Out of Rs. 8,00,000/-, Rs. 3,50,000/- was to be paid at the time of setting aside of the P.O. proceedings against the petitioner and respondent no. 2 undertook to cooperate in



setting aside of the said proceedings. An application was moved before the learned Magistrate, that in terms of the aforesaid settlement, the order declaring the petitioner to be Proclaimed Offender be set aside; and he be granted bail along with grant of reasonable time to appear before the learned Trial Court. The aforementioned application was not pressed by counsel for the petitioner. In the meantime, respondent no. 2 and her brother were in contact with the petitioner and e-mails were exchanged for seeking divorce by mutual consent. However, respondent no. 2 had approached the learned Trial Court for re-opening the FIR being FIR No. 146/2002; and the same was disposed of, *vide* order dated 31.08.2022.

14. It is stated that the petitioner is permanently residing in Belgium, at present and he has intention to come to India and abide by terms of the above-said settlement; however, the intentions of respondent no. 2 had turned *malafide* and to extort more money from the petitioner, respondent no. 2 had started harassing the petitioner and raising her demands.

15. It is stated that the petitioner is innocent, and due to abuse of process of law to harass the petitioner and his family members, coercive proceedings such as issuance of NBWs , proclamation under Sections 82/83 Cr.P.C. obtained by the respondent no. 2, seeking the petitioner's arrest, the petitioner is not able to visit India to join investigation due to such proceedings, and therefore the petitioner seeks cancellation of NBWs issued against him, as well as setting aside of the consequential order dated 05.02.2011 under Sections 82/83 of Cr.P.C. It is also stated that correct process of law under



Sections 82/83 of Cr.P.C. was not followed and therefore, the said order dated 05.02.2011 be set aside.

16. On the other hand, learned counsel for the respondent argues that the learned Revisional Court has exercised its judicial discretion judicially and fairly and has correctly passed the order dated 08.07.2022 as per the principles of natural justice, equity and good conscience, and has rightly upheld the earlier orders passed by the learned Trial Court. It is argued that the petitioner has concealed the fact that prior to the marriage with respondent no. 2, the petitioner was divorced and was having one daughter but he had hidden the said fact from respondent no. 2 and her family as well as the Registrar of Marriage. It is also stated that the second citizenship/passport was never produced by the petitioner before anyone at any point of time and even in the present case, the petitioner has failed to file the same and has also not mentioned his email address, mobile number and address proof. **It is submitted that petitioner was well aware of the different proceedings going in the Courts in Delhi as also observed by the learned Revisional Court and the same are sufficient to prove that the petitioner was well aware about the proceedings conducted by the learned Trial Court against him. It is argued that NBWs in this case were issued as per law and even extradition proceedings were initiated against him. It is also argued that despite entering into a settlement agreement with the complainant in mediation proceedings, the petitioner had failed to comply with the same. Therefore, in such circumstances, it is prayed that the instant petition be rejected.**



17. This Court has heard arguments addressed by the learned counsel for petitioner as well as learned counsel for the respondent, and has also gone through the record placed before it.

18. After going through the record, this Court notes that NBWs in the present case were issued by the learned Magistrate after making every endeavour to serve the petitioner; however, when he could not be served through ordinary process of law, NBWs were issued against him as he was avoiding the process of law, despite having knowledge of the case.

19. The learned Sessions Court has rightly noted in the impugned order that the petitioner had filed the petition *vide* C.R. No. 564/2003 before this Court, on 07.10.2003, wherein he was directed to deposit 50 per cent of the arrears of maintenance. The said order passed by this Court is extracted herein below:

"Notice to the respondent for the date fixed. Subject to the petitioner depositing 50% of the arrears of maintenance amount granted by the learned trial court, in the Court within four weeks, without prejudice to the pleas and contentions of the parties, the operation of the impugned order shall remain stayed. The amount so deposited by the petitioner shall not be allowed to be withdrawn by the respondent without the leave of the Court.

A copy of the order be given dasti to the counsel for the petitioner."

20. The petitioner had, however, not complied with the above-said order and therefore, the petition was dismissed on 16.12.2003.

21. The extradition proceedings were thereafter initiated against the petitioner, as he had failed to appear before the investigating



agency or the learned Trial Court. This Court *vide* another order dated 19.01.2007, in W.P. (C) 12428/2004, had also observed as under:

“The Status Report dated 16.01.2007 has been perused which shows that necessary steps have been taken before the Mahila Court. It is recorded in the Status Report that the extradition proposal cannot be taken up till such time as the charges are framed in the case, which are undisputedly yet to be framed. The competent court now being seized of the matter and the respondents taking action in this behalf, no further directions can be issued in this petition and it is expected that the competent court will examine the question of framing of charges expeditiously. Petition stands disposed of.”

22. The petitioner had also sent a letter to the learned Trial Court, on or before 03.03.2009, which reads as under:

“Finally I got divorce from Dutch court in The Hague on 25-03-2004, see document No. 7. She was also informed about it by registered post. She could never marry me because at the time of our marriage she was already married with another man and not actually divorced from him.

Since September 2004 I am living in Belgium, see address below.

At present it is financially not possible for me to visit India so herewith I request you to accept the divorce decision taken by the Dutch court, about which Kiran has been informed.”

23. Thereafter, the petitioner had again entered into a settlement agreement with the complainant, before the Delhi High Court Mediation and Conciliation Centre, on 17.09.2013. Accordingly, he had filed an application before the learned Trial Court on 19.09.2013



for recalling of the impugned order, where he had undertaken to appear before the said Court. However, the said application was withdrawn on 03.01.2014. The relevant part of the said application, reads as under:

“6. That the accused / applicant is permanently settled in Belgium and genuinely / bonafidely intends to come to India and abide by terms of the settlement. The accused / applicant undertakes to appear before this Hon'ble Court as and when directed to do so.

PRAYER:

(d) give reasonable time to the accused / applicant to appear before this Hon'ble Court; and”

24. Thus, as rightly observed by the learned Revisional Court, the petitioner had neither adhered to the terms of mediation settlement dated 17.09.2013, nor appeared before the learned Trial Court. It is thus, evident that the petitioner was aware of the present case as he had filed through his father a criminal complaint being CC No. 533164/2016, titled as '*Randhir Singh Vs. Kiran and others*', under Sections 417/494/495/120B IPC, 1860, for prosecuting respondent no. 2 and her family members. The entire family was thus aware of all the facts, circumstances and status of the cases pending against them, and the petitioner herein, was not only filing various cases before this Court, but also through his family in the learned Trial Court. He however, did not adhere to the settlement arrived at between the parties on 17.09.2013, neither did he comply with the order of this Court, wherein he was directed to deposit 50 per cent of the arrears of maintenance. He neither appeared before the learned



Trial Court, at any point of time, nor before the investigating agency. Merely writing a letter to the learned Trial Court, when his counsel himself was appearing before the learned Trial Court, cannot be of much help to the petitioner, in his arguments. In C.R. No. 564/2003, instituted on 07.08.2003 before this Court, it was also mentioned that he had given his local address as House no. 24, Village Said Ul Ajab, Post Mehrauli, New Delhi-110030, which is the same address where NBWs were issued, and thereafter, process under Section 82/83 of Cr.P.C. was executed.

25. The father and the family of the petitioner as well as his counsel, were aware of the relevant proceedings between the parties, before this Court, and all other Courts. The petitioner however, evaded the process of law, for more than 20 years. Thus, this Court finds no infirmity in the issuance of NBWs and subsequently the process under Section 82/83 of Cr.P.C., and the order *vide* which he was declared proclaimed offender.

26. However, this Court notes that in case of *Sanjay Bhandari vs. State (NCT of Delhi)*, it was held as under:

"31. I am thus of the view that a person who is accused of offences other than the ones enumerated in section 82(4) and qua whom a proclamation has been published under section 81(1) would be a 'Proclaimed person' and not a deemed 'Proclaimed Offender'."

27. Thus, this Court is in agreement with the finding of the learned Revisional Court *vide* which the criminal revisional petition challenging order dated 05.02.2011, declaring him 'Proclaimed



Offender’, was allowed to the extent that he was declared as ‘Proclaimed person’.

28. Accordingly, in view of the reasons recorded in preceding paragraph, the present petition along with pending application stands dismissed.

29. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 3, 2023

Aanchal