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

+ **CRL.M.C. 3755/2025**

JAGADISH DAS

.....Petitioner

Through: Mr. Amit Chadha, Sr. Advocate with
Mr. Advocate (appearance not given)

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for the State.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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30.05.2025

CRL.M.A. 16497/2025 EXEMPTION

Allowed, subject to all just exceptions.

The application stands disposed of.

CRL.M.C. 3755/2025 & CRL.M.A. 16496/2025 STAY

1. This is a petition under Section 528 of BNSS, 2023, seeking to set aside orders of NBWs dated 11.07.2024, issuance of process under Section 82 Cr. PC dated 12.08.2024 and declaration of the petitioner as proclaimed person vide order dated 23.10.2024, passed by the learned CJM in Case No. 88/2022, under Sections 420/409 IPC, PS Economic Offence Wing.
2. Mr. Amit Chadha, learned Senior Counsel submits that Investigating Officer sent notice under Section 41-A Cr. PC to the petitioner on address i.e. 203, R.N. Tagore Road, Paragans, North Kolkata, West Bengal on



22.06.2023, but the said address was found to be locked and on enquiry, it was revealed that the said address was lying locked for the last 1.5 years. Although, the investigating agency was having eight addresses of the petitioner, as provided by the complainant to the IO, no steps were taken to serve any notice/summon on those addresses despite availability, which raises suspicion over the entire process. He further submits that on 05.04.2024, a notice was sent on the WhatsApp number of the son of the petitioner, but due to health condition, the petitioner could not join the investigation. Relying upon the order dated 21.01.2025, passed in ***Satender Kumar Antil Vs. CBI in Miscellaneous Application No. 2034/2022 in MA 1849/2021 in SLP (Crl.) No. 5191/2021***, it is submitted that the police machinery cannot circumvent the mandate of Section 41-A of Cr. PC/Section 35 of BNSS, 2023 by serving notices through WhatsApp or other electronic modes, instead of following the normal mode of service.

3. It is thus argued that issuance of NBWs was done without any effort to verify or attempt service at the petitioner's multiple other known addresses, all of which were duly mentioned in the charge sheet and within the knowledge of the IO. Such action is in complete disregard of the well established principles of criminal jurisprudence which requires that coercive measures like NBWs should be applied only after due diligence and upon a clear finding that the accused is willfully avoiding the due process of law. It is further argued that the issuance of a proclamation under Section 82 Cr. PC is not automatic but upon the non-execution of warrants. The court must record its reasons to believe that the person against whom the warrants have been issued has absconded or is concealing himself so that such warrants cannot be executed. It is submitted that order dated 12.08.2024 by which



process under Section 82 Cr. PC was issued against the petitioner, suffers from complete lack of judicial application of mind.

4. Learned APP justifies the order of issuance of proclamation on the ground that petitioner was served with notice through *WhatsApp* at the last known address of the petitioner. He submits that despite having the knowledge of the notice, petitioner did not join the investigation. He supports the order dated 23.10.2024 on the ground that the criminal court does not have the power to review its own orders.

5. A bare perusal of the record reveals that petitioner filed an application for cancellation of order dated 23.10.2024, but such application has been dismissed mainly on the ground that the order declaring petitioner as a proclaimed person, has attained finality and cannot be reviewed by the court. The revision filed by the petitioner against the said order was later dismissed as withdrawn.

6. Upon careful consideration of the submissions made and the material placed on record, it appears that learned CJM dismissed the petitioner's application solely on the ground that the recall of order dated 23.10.2024, whereby, the petitioner was declared a proclaimed person, would amount to review, which is beyond the trial court's jurisdiction. However, the reasoning overlooks the well settled principle that trial court is empowered to examine the legality of the process leading to a proclamation under Section 82 Cr. P.C., especially if it is alleged that due process was not followed or the statutory requirements were not complied with.

7. Even though, criminal court does not have power of review, the court can recall/cancel an order if the order has been passed without following the due process or if there is violation of any statutory mandate. The



issuance of proclamation without service of warrants is a jurisdictional error. A mechanical rejection of the application without dealing with the merits of the justification for non-appearance may result in miscarriage of justice. The learned CJM's refusal to revisit the process or assess compliance with the safeguards amounts to a failure to exercise jurisdiction vested in the court.

8. Hence, in light of the above facts and circumstances, the impugned order dated 09.04.2025 is set aside and while disposing of the petition, the matter is remitted to the learned trial court with direction to consider the petitioner's application afresh on its own merits after taking into account all relevant documents and affording an opportunity of hearing to the parties. The trial court shall pass a reasoned order in accordance with law.

9. The petition along with pending applications, if any, stand disposed of.

RAVINDER DUDEJA, J

MAY 30, 2025

Ib/RM/NA