



2025:DHC:9529



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

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Reserved on: 06.08.2025
Pronounced on: 31.10.2025+ **CRL.M.C. 4580/2024 & CRL.M.A. 17244/2024 STAY****HITESH KUMAR**

.....Petitioners

Through:. Mr. Prithvi Sabharwal,
Mr. Sanjeet Kumar, Ms.
Shweta Singh & Mr. Shiv
Chopra, Advs.

versus

STATE OF NCT OF DELHI

.....Respondents

Through: Mr. Aman Usman, APP
for the State with SI
Priyanka, PS Shahdara SI
Sunil Dev Sihag, PS
Cyber, Shahdara**CORAM:****HON'BLE MR. JUSTICE RAVINDER DUDEJA****J U D G M E N T****RAVINDER DUDEJA, J.**

1. This is a petition under Section of the Code of Criminal Procedure, 1973 [“Cr. PC”] filed on behalf of the petitioner, seeking to set aside the order dated 02.08.2022, passed by learned Metropolitan Magistrate [“MM”] in case FIR No. 43/2019, registered under Section 420/467/468/471/120-B/34 of the Indian Penal Code, 1860 [“IPC”], whereby, the petitioner was declared an “absconder”.



FACTUAL BACKGROUND

2. The FIR in this case has been registered pursuant to the directions issued by the court of learned MM under Section 156(3) Cr. PC. As per allegations, petitioner Hitesh Kumar and co-accused Anurag Sharma were the registered owners of properties No. 1/4991 & 1/4732 since 2015 & 2012 respectively and they executed sale deed in favour of the complainant in the year 2017, despite the properties being already mortgaged with the Federal Bank, India Bulls, Dena Bank & Tata Capital Financial Services Ltd.

3. During investigation, Investigating Officer [“IO”] filed an application for issuance of Non Bailable Warrants [“NBWs”] against the petitioner on 16.08.2019, stating that petitioner was not residing at the address given by the complainant. On such application, learned trial court issued NBWs against the petitioner.

4. On 06.05.2022, another application was filed by the IO for issuance of NBWs against the petitioner. Learned MM, while observing that petitioner was intentionally avoiding the investigation, issued NBWs against him for 10.05.2022.

5. The NBWs so issued could not be executed and an application dated 10.05.2022 was filed for issuing process under Section 82 Cr. PC. The application was allowed and process under Section 82 Cr. PC was issued against the petitioner.



6. Proclamation was published in Hindi and English newspapers. Statement of Process Server was recorded and petitioner was declared Proclaimed Offender [“PO”] vide order dated 02.08.2022.

SUBMISSIONS ON BEHALF OF THE PETITIONER

7. Learned counsel for the petitioner submits that despite being aware that the petitioner was not residing at the address given by the complainant, investigating agency without application of mind proceeded to execute the NBWs at the same address and for the obvious reasons, the same could not be executed. It is contended that without making any endeavour to actually locate the correct address of the petitioner, the investigating agency preferred the application seeking issuance of process under Section 82 Cr. PC and the trial court conforming to the mechanical compliances being followed by the investigating agency, erroneously issued the process under Section 82 Cr. PC vide order dated 10.05.2022 and subsequently vide order dated 02.08.2022, petitioner was declared Proclaimed Offender (PO).

8. It has been submitted that there was no compliance of Section 82 Cr. PC before declaring the petitioner to be an absconder. As per Section 82 Cr. PC, the proclamation must be displayed in a conspicuous location in the town or village where the person resides but it is the prosecution’s own case that the petitioner was not residing at that address for the last about ten years. It is argued that process under Section 82 Cr. PC was never executed either on the petitioner or



on any of the family members. In support of his submissions, the learned counsel placed strong reliance on the judgment passed by this Court in *Rajesh Ebrahimkutty Majidhabeevi Vs. State (Govt. of NCT of Delhi) & Anr.* 2021 SCC OnLine Del 4642, *Mohd. Haris Usmani Vs. State (NCT of Delhi)* 2021 SCC OnLine Del 5335 & *Inder Mohan Goswami & Ors. Vs. State of Uttranchal & Ors* in Crl. A. 1392/2007.

SUBMISSIONS ON BEHALF OF STATE/RESPONDENT

9. *Per contra*, learned APP, appearing on behalf of the State/respondent, submits that IO duly filed the report in terms of Section 82 Cr. PC and the trial court after being satisfied about with the compliance of statutory requirements, proceeded accordingly. It was argued that there has been due compliance of the procedures, inasmuch as, proclamation was pasted in the town or village where petitioner resided and the expression “town” or “village” does not necessarily mean publication at the house of the accused alone. It is further submitted that even if the petitioner was not residing in the said house at the relevant time, the statements of the two persons confirmed that he used to live there earlier and therefore publication was sufficiently affected.

10. It has been further submitted that the object of proclamation was just to inform the petitioner about the requirement of appearance within 30 days, which was further ensured by publication in two



newspapers. However despite such publication, petitioner failed to appear before the court, giving rise to a presumption that he deliberately chose to evade the proceedings. It is thus submitted that the trial court rightly declared the petitioner as an “absconder”, while recording its satisfaction that the statutory mandate under Section 82 Cr.PC stood duly complied with.

ANALYSIS & CONCLUSION

11. The stand of the petitioner is that the trial court erred in passing the impugned order. Petitioner asserts that despite his non-residence at the given address for more than a decade, the investigating agency mechanically proceeded with issuance and execution of NBWs at the same address and without verifying his actual residence or making due enquiries, proclamation proceedings under Section 82 Cr. PC were initiated. Such mechanical exercise of jurisdiction strikes at the root of the safeguards envisaged in the Cr. PC.

12. The procedure for declaring the accused to be a proclaimed offender is detailed in Section 82 Cr. PC, which 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).”

13. A plain reading of Sub Section (1) of Section 82 Cr. PC would show that publication of proclamation must be preceded by issuance of a warrant and the satisfaction of the court in terms of the phraseology used in the Section “reasons to believe” that the person



against whom the warrant has been issued is absconding or concealing himself so that such warrant cannot be executed. The phrase “reasons to believe” connotes that there should be material before the court to have some cogent reasons to believe as such. Only after the court is satisfied of the existence of the twin conditions that the court can cause a written proclamation to be published requiring such a person to appear at a specified place and at a specified time of not less than 30 days from the date of publication of such proclamation.

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

15. In ***Dalmia Resorts International Pvt. Ltd. Vs. Deepak Gupta reported as 2002 SCC OnLine Del 538***, the Coordinate Bench of this Court observed that issuance of proclamation and attachment orders are exceptional remedies. The relevant para of the judgment reads as under:-

“3. ...This apart, proclamation for any person absconding can be issued if the Court has the reasons to believe that the person against whom a warrant has been issued by it has absconded or is concealing himself and that warrant of arrest cannot be executed only then the Court is empowered to publish a written proclamation requiring him to appear to at specified date and time,



within thirty days from the date of publication of such proclamation. The term 'absconding' does not necessarily imply a change of place. The petitioner being a private limited company, the question of its absconding does not arise. The process of proclamation and attachment are exceptional remedies and should not be issued as a matter of course whenever the warrant is returned unexecuted. The non-conformance of Section 82(1) and (2) would be violation of the procedure established by law within the meaning of Article 21 of the Constitution of India. It appears that while issuing process under Sections 82/83 Cr. P.C., the Court did not even notice the report on the warrant. The impugned order issuing proclamation against the petitioner, on the face of it is not sustainable."

16. In **Mohd. Haris Usmani** (supra), this Court while discussing multiple precedents, *inter alia* held as under:-

"18. It is worthwhile also to note that the issuance of process under Section 82 Cr.P.C. and pronouncing a person as 'proclaimed person' or 'proclaimed offender' entail serious consequences, including not only deprivation of personal liberty of a person, but also attachment of properties and initiation of proceedings under Section 174A IPC against such person. Therefore, any order to that effect must reflect satisfaction of the Court that the person concerned has absconded or is concealing himself to avoid the process of law. Even otherwise, reasons form the heart and soul of any judicial pronouncement. No judicial order is complete without reasons and it is expected that every Court, which passes an order, should give reasons for the same [Refer : Sebastiani Lakra v. National Insurance Company Limited reported as (2019) 17 SCC 465]."

17. The importance of recording of reasons by the Magistrate before issuing written proclamation has also been emphasized by the Coordinate Bench of this Court in **G. Sagar Suri Vs. State reported as 2003 SCC OnLine Del 759**, in following terms:-



“13. It is manifest from the provisions of Section 82 Cr. P.C. that before publishing the written proclamation requiring the accused to appear under the provisions of Section 82 Cr. P.C, the court has to record the reasons either after taking evidence or without evidence that a person against whom warrants have been issued has absconded or is concealing himself so that such warrants cannot be executed.....”

18. Similarly, in **Baljeet Kaur Vs. State of NCT of Delhi & Anr. Crl. MC 1039/2023**, the Coordinate Bench of this Court emphasized that Section 82 Cr. PC provides a vital safeguard to ensure that an unaware accused is duly apprised of proceedings and given an opportunity to surrender. The Court clarified that the phrase “reason to believe” under this provision requires cogent material before the Magistrate to justify satisfaction that the accused has absconded or concealed himself. It was further observed that a proclamation order without such judicial reasoning is legally unsustainable. Importantly, the Court noted that the absconding does not necessarily mean leaving one's residence but rather implies evading the legal process which must be carefully assessed in the light of the intent. On the facts, the Court found that repeated non-service of summons and warrants reflected defective service rather than a deliberate attempt by the petitioner to evade, rendering the proclamation invalid.

19. Adverting to the present case, it is noted that IO obtained NBWs against the petitioner for 10.05.2022. The NBWs could not be executed and on 10.05.2022, IO moved an application for issuance of



process under Section 82 Cr. PC. The relevant para of the report of the IO reads as under:-

“Thereafter; to execute the NBW of Hitesh Kharbanda S/O S.P. Kharbanda, the address of the accused i.e H. No. 3138, Ram Nagar, Mandoli Road, Shahdara, Delhi was also visited 2 times on 08/05/2022 and 09/05/2022. On the above address, one Rajan Sharma S/O B.D. Sharma was found residing who stated that he is residing on the above address for the last 12 years. He stated that he had purchased the house from Kanta Kharbanda S/O Lt. S.P. Kharbanda in 2010 and since then he is living in that house with his family and he has never seen Hitesh Kharbanda S/O S.P. Kharbanda. The neighbour verbally stated that they hadn’t seen Hitesh Kharbanda S/O S.P. Kharbanda for the last 10 years. They don’t know whereabouts of accused Hitesh Kharbanda. The contact number of accused was also not found. So, the NBW couldn’t be executed even after best efforts.”

20. The learned Magistrate issued the process under Section 82 Cr. PC and passed the following order:-

“10.05.2022

Present: Ld. APP for the State.

IO in person.

IO has moved the present application seeking issuance of Process u/s 82 Cr.P.C against both the accused namely Hitesh & Anurag.

Heard. Record Perused.

Vide order dated 06.05.2022, NBW were issued against both the accused Hitesh & Anurag. .

Case diary seen.

It seems that the accused person are intentionally avoiding the investigation.

Application stands allowed.

Issue Process u/s 82 Cr.P.C against both the accused Hitesh & Anurag for 07.07.2022.



IO is directed to comply the judgment of Hon'ble High Court of Delhi of Sunil Tyagi Vs. Govt, of NCT of Delhi” while executing the process u/s 82 Cr.P.C.”

21. On 02.08.2022, petitioner was declared PO. The order of the learned Magistrate reads as under:-

“ 02.08.2022
Present: Sh. Chiranjit Singh, Ld. APP for the State.
Process server SI Sunil Dev is present.
Statement of process server, who had executed the process U/s 82 Cr.P.C. recorded separately.
Also, on 07.06.2022 information of proceedings u/s 82 Cr.P.C was published in a Hindi & English Newspaper. Copy of the said newspaper is on record.
I am satisfied with the execution of process u/s 82 Cr.P.C. More than 30 days have been elapsed since the proclamation and accused Hitesh Kharbanda and Anurag Sharma have not appeared before the concerned court. It seems that they are intentionally avoiding the service of law. Accordingly, accused Hitesh Kharbanda and Anurag Sharma are declared absconder.
Application disposed of, accordingly. Copy dasti.”

22. A perusal of the applications of the IO for issuance of NBWs and process under Section 82 Cr. PC, the report submitted by the IO about the non-execution of the warrants and the aforesaid orders passed by the learned trial court would go to show that petitioner was not residing at the address given by the complainant. Obviously, therefore, NBWs could not have been executed upon the petitioner at the said address. It is not the case of the investigating agency that petitioner was aware of issuance of NBWs/proclamation against him or that due to this reason, he left the address to evade his arrest.



Rather, if the police report is to be believed, the person who was found residing at the given address and the neighbourers informed the IO that petitioner was not residing there for the last ten years and his whereabouts were not known. Petitioner was thus not residing at the address since prior to the registration of the FIR. The term “absconding” does not necessarily entail a change of location. The trial court did not give any due consideration to the statement of Rajan Sharma, who stated that he has been residing at the said address for the last about 12 years and ignored the enquiry conducted by the IO from the neighbourers regarding the petitioner.

23. Trial Court failed to appreciate that the summons and warrants were not duly served upon the petitioner. Possibly the petitioner was not even aware that he was wanted in the present case, and therefore, the question of his intentionally and deliberately evading the process, does not arise, which is a pre-requisite in terms of Section 82 Cr. PC. Moreover, the order declaring the petitioner as PO is bereft of any reasoning. No reason has been mentioned for arriving at the satisfaction that the petitioner has been intentionally avoiding the process.

24. The right of liberty is most precious of all human rights. The issuance of NBWs/proceedings under Section 82 Cr. PC involve the interference of the personal liberty. Therefore, the courts need to be



careful before issuing NBWs/proceedings under Section 82 Cr. PC. The courts need to strike a proper balance between the liberty of an individual and the interest of the public and the State while issuing NBWs. The coercive processes should never be issued without proper scrutiny due to extremely serious consequences and ramifications which enure on the issuance of such processes. The requirement of “reasons to believe” that the accused is absconding as mandated in Section 82 Cr. PC must be demonstrably satisfied on record and the absence of such reasoning in the impugned order militates against legal principles.

25. The impugned order dated 02.08.2022, when tested in the light of mandate of Section 82 Cr. PC and the decisions discussed hereinabove, fails the test of judicial scrutiny, as impugned order does not reflect any application of mind.

26. Hence in view of the aforesaid discussion, petition is allowed and the impugned order dated 02.08.2022, declaring the petitioner as Proclaimed Offender, is set aside. The pending application(s), if any, also stand disposed of.

RAVINDER DUDEJA, J.

OCTOBER 31, 2025/NA