

2024 SCC OnLine Del 756

In the High Court of Delhi at New Delhi

(BEFORE ANOOP KUMAR MENDIRATTA, J.)

Mohd. Akhtar Gujjar ... Petitioner;

Versus

State NCT of Delhi ... Respondent.

CRL.M.C. 780/2024

Decided on February 2, 2024

Advocates who appeared in this case:

Mr. C.M. Thapliyal, Mr. S.P. Paul, Ms. Kiran Latal Pal and Ms. Kanchan Thapliyal, Advocates.

Mr. Ajay Vikram Singh, APP for the State with SI Navneet Yadav, PS Budh Vihar.

The Order of the Court was delivered by

ANOOP KUMAR MENDIRATTA, J. (Oral)

CRL.M.A. 3142/2024

1. Exemption allowed, subject to just exceptions.
2. Application stands disposed of.

CRL.M.C. 780/2024 & CRL.M.A. 3143/2024

3. Petition has been preferred on behalf of the petitioner, under Section 482 Cr. P.C., for setting aside order dated 28.11.2023 passed by learned Additional Sessions Judge (Electricity) North-West, Rohini Courts, Delhi in Crl. Revision Petition No. 482/2023, and order dated 08.06.2023 passed by learned M.M.-04, North-West, Delhi, whereby the petitioner was declared as 'Proclaimed Offender' ('PO', for short) arising out of FIR No. 54/2020 under Sections 420/120B/34 IPC registered at P.S. : Budh Vihar.

4. In brief, as per the case of the prosecution, FIR was registered on complaint of *Mohd. Iqbal* who alleged that he is a permanent resident of Lal Bazar, Alamdhai Colony, Srinagar, Kashmir and presently residing with one of his acquaintance *Sh. Prashant Kumar* at Sector-05, Rohini, Delhi. Further, complainant had an ancestral Kashmir-Blue-Sapphire (*Neelam*) stone weighing 13.03 carats, valued at more than Rs. 3 crores, which he intended to sell on account of dire need of money for purpose of treatment of his wife, but was duped of the same by accused in conspiracy. Charge-sheet against some of the accused is stated to have been filed, while the proceedings under Section 82 Cr. P.C. are pending against the petitioner, who has been declared as PO by the learned MM vide order dated 08.06.2023.

5. Learned MM issued process under Section 82 Cr. P.C. *qua* the petitioner and co-accused *Sanjay Awasthi*, since after registration of FIR, the said accused were deliberately avoiding execution of NBWs and could not be found at their respective addresses. Accordingly, process under Section 82 Cr. P.C. was executed by all usual modes alongwith publication against *Md. Akhtar Gujjar, S/o Md. Hussain Gujjar, R/o Village Kralchal, Chamalwar, P.S. Banihal, District Ramban, Jammu* (petitioner herein) and co-accused *Sanjay Awasthi, S/o Ram Chander, R/o R-73, Gali No. 3, Shaheed Bhagat Singh Nagar, Karala, Delhi* on 17.03.2023. Further, vide order dated 08.06.2023 after recording the statement of process server, learned MM declared *Md. Akhtar Gujjar* (petitioner herein) as PO.

6. The aforesaid order passed by learned MM, declaring the petitioner as PO, was challenged in Revision Petition which was dismissed vide order dated 28.11.2023 by learned Additional Sessions Judge. In the revision petition, it was canvassed on behalf of the petitioner that Non-Bailable Warrants were issued by learned MM on 04.02.2021, in a mechanical manner and no such warrant was served on the petitioner. Further, *chaspa (i.e. affixation)* made by the process server was disputed.

7. In the present petition two fold contentions have been raised on behalf of the petitioner. Firstly, it is contended that process under Section 82 Cr. P.C. was required to be executed at the official address of the petitioner and not at the address of his village. Secondly, relying upon *Sanjay Bhandari v. State (NCT of Delhi)*, 2018 SCC OnLine Del 10203; and *Manoj Tandon v. State*, Crl.M.C. No. 90/2021 decided on 25.03.2021 by Coordinate Benches of this Court, it is contended that the petitioner could not have been declared as PO under Sub-section (4) of Section 82 Cr. P.C. as the same is confined to specific offences enumerated therein. The declaration as 'PO' is stated to be in violation of Section 82 Cr. P.C.

8. On the other hand, contentions made by learned counsel for the petitioner have been opposed by learned APP for the State. It is pointed out that aforesaid contentions were not raised before the Trial Court or Revisional Court. Further, the proceedings under Section 82 Cr. P.C. are stated to have been initiated in accordance with law, since the petitioner was absconding and the Non-Bailable Warrants could not be executed at the residential address of the petitioner as per record. It is further submitted that even the learned counsel for the petitioner is unclear as to the other address of the petitioner wherein, he is alleged to be residing, after registration of the FIR.

9. In the aforesaid context, it may be appropriate to notice that bail application No. 4381/2021, preferred on behalf of the petitioner, for grant of anticipatory bail was dismissed by this Court vide order dated

25.11.2022. Petitioner as such is aware of the proceedings initiated against him by the State but has failed to join investigation despite dismissal of his application for anticipatory bail. The contention raised on behalf of the petitioner that process under Section 82 Cr. P.C. was required to be executed at official address is without any merit, since no other address was ever shared by the petitioner with the Investigating Agency. The Revision Petition as well as present petition preferred by the petitioner reflect the same address of Village Kralchal, Chamalwar, P.S. Banihal, District Ramban, Jammu & Kashmir on which the proceedings under Section 82 Cr. P.C. have been executed. The contention raised on behalf of the petitioner on the face of record is merely an afterthought.

10. The next contention raised by learned counsel for the petitioner, that he could not have been declared as PO in terms of Sub-section (4) of Section 82 Cr. P.C., may be examined in the light of Section 82 Cr. P.C. which provides as under:

"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 Courthouse;

(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 (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)."

11. The Co-ordinate Bench of this Court in *Sanjay Bhandari v. State (NCT of Delhi)* (supra) observed that a person who is accused of offences other than the ones enumerated in Sub-section (4) of Section 82 Cr. P.C. and qua whom a proclamation has been published under Sub-section (1) of Section 82 Cr. P.C. would be a 'Proclaimed Person' and not 'Proclaimed Offender', since no other provision except Sub-section (4) of Section 82 Cr. P.C. provides for declaring a person as 'proclaimed offender'. It was further held that declaring the petitioner therein as PO, 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. The aforesaid judgment has also been followed in *Manoj Tandon v. State* (supra) wherein the proclamation directing the petitioner as proclaimed offender under Sections 186/332/352/353/34 IPC was set aside. Further, *Sanjay Bhandari v. State* (supra) duly distinguishes the judgment passed in *Smt. Deeksha Puri v. State of Haryana*, (2013) 1 RCR (Cri) 159 (2), which has been relied upon by learned APP for the State. In view of aforesaid settled position of law, a person can be directed to be declared as a proclaimed offender under Sub-section (4) of Section 82 Cr. P.C. only if he is accused of offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 IPC.

12. The prosecution in the instant case has only invoked offences under Section 420/120B/34 IPC, which have not been specified under Sub-section (4) of Section 82 Cr. P.C. In view of above, order dated 08.06.2023 passed by learned MM to the extent it declares the petitioner as PO is liable to be set aside. However, this would not affect the status of the petitioner as a 'proclaimed person' and would be without prejudice to any action which may be initiated against the petitioner for failure to appear in terms of the proclamation issued.

13. A copy of this order be forwarded to Delhi Judicial Academy for holding a session for Judicial Officers, as declaration under Sub-section (4) of Section 82 Cr. P.C. appears to be invariably issued even in respect of offences which are not specified in Sub-section (4) of Section 82 Cr. P.C.

14. Petition is accordingly disposed of. Pending application, if any,

also stands disposed of. A copy of this order be forwarded to the learned Trial Court as well as Revisional Court for information.

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