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

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Date of Decision: 07th January, 2021

+ CRL.M.C. 5328/2013 & CRL.M.A. 19244/2013

SUNIL TYAGI

..... Petitioner

Through: Mr. Ajayinder Sangwan, Mr. Raj
Sharma, Mr. Arun Rathi,
Mr. Summinder Paswan and
Mr. Siddharth Gill, Advocates

versus

GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Rahul Mehra, Standing Counsel
with Mr. Chaitanya Gosain,
Advocate for Delhi Police along with
Mr. Rajesh Deo, DCP/Legal.
Mr. Nikhil Goel, SPP with Mr. Vinay
Mathew and Mr. Dushyant Sarna,
Advocates for respondent/CBI.
Mr. Dayan Krishnan, Senior
Advocate as Amicus Curiae with
Ms. Manvi Priya, Ms. Aakash Lodha,
Mr. Sukrit Seth, Ms. Niharika Kaul
and Mr. Sanjeev Seshadri, Advocates.
Mr. Vikas Pahwa, Senior Advocate as
Amicus Curiae
Prof. (Dr.) G.S. Bajpai, Professor of
Criminology & Criminal Justice,
National Law University, Delhi as
Amicus Curiae
Mr. Rajshekhar Rao, Advocate as
Amicus Curiae

+ CRL.M.C. 4438/2013 & CRL.M.A. 15894/2013

TANMAY KUMAR

..... Petitioner

Through: Dr. L. S. Chaudhary, Advocate

versus

STATE

..... Respondent

Through: Mr. Rahul Mehra, Standing Counsel with Mr. Chaitanya Gosain, Advocate for Delhi Police along with Mr. Rajesh Deo, DCP/Legal. Mr. Nikhil Goel, SPP with Mr. Vinay Mathew and Mr. Dushyant Sarna, Advocates for respondent/CBI. Mr. Dayan Krishnan, Senior Advocate as Amicus Curiae with Ms. Manvi Priya, Ms. Aakash Lodha, Mr. Sukrit Seth, Ms. Niharika Kaul and Mr. Sanjeev Seshadri, Advocates. Mr. Vikas Pahwa, Senior Advocate as Amicus Curiae Prof. (Dr.) G.S. Bajpai, Professor of Criminology & Criminal Justice, National Law University, Delhi as Amicus Curiae Mr. Rajshekhar Rao, Advocate as Amicus Curiae

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

CRL.M.C. 5328/2013

1. The petitioner is seeking quashing of FIR No.27/2013 dated 22nd January, 2013, PS Amar Colony under Section 174A IPC.
2. The petitioner is a Director of M/s Core Builders Pvt. Ltd., who issued a cheque bearing No.002310 dated 06th July, 2010 for Rs.20,00,000/- to

respondent No.2. The aforesaid cheque was dishonoured upon presentation due to insufficiency of funds whereupon respondent No.2 instituted a complaint under Section 138 Negotiable Instruments Act against M/s Core Builders Pvt. Ltd. as well as against the petitioner.

3. The learned Metropolitan Magistrate issued summons to the petitioner at the addresses given in the complaint namely 1007, New Delhi House, 27, Barakhamba Road, New Delhi 110001 and Prabhat Nagar, Meerut City, Meerut, U.P. The summons issued to the Barakhamba Road address returned unserved with the remarks that there was no firm with the name of M/s Core Builders Pvt. Ltd. at the given address whereas the summons issued to Meerut address returned unserved with the remarks that the address was incomplete as no house number has been given in the complaint.

4. Respondent No.2 filed an application dated 06th January, 2011 before the learned Metropolitan Magistrate in which it was stated that the petitioner had shifted from address given in the complaint to the new address, namely Apartment No.601, Block No.4, Kailash Dham Apartments, Sector-51, Noida, U.P. whereupon the Court issued fresh summons at the above address which returned unserved with the report that the flat was lying vacant since last two years.

5. Respondent No.2 filed another application dated 13th October, 2011 in which the new address of the petitioner was given as Flat No.1012, Ashadeep Apartment, Oshiwara, Mumbai whereupon the Court issued the fresh summons at the aforesaid address which returned unserved with the remarks that the address was incomplete.

6. On 22nd May, 2012, the learned Metropolitan Magistrate recorded that the accused was willfully avoiding the service of summons and issued

bailable warrants for Rs.50,000/- with one surety, returnable on 04th July, 2012. The bailable warrants issued to the petitioner returned with the report that there was no company of the given name at 1007, New Delhi House 27, Barakhamba Road, New Delhi-110001; Apartment No.601, Block No.4, Kailash Dham Apartments, Sector-51, Noida, U.P. was lying vacant for the last two years; and the Meerut address was incomplete. The order dated 22nd May, 2012 is reproduced hereunder:-

“Summons issued to the accused received back unserved. It is submitted by the complainant that accused is willfully avoiding the service of summons and this case is pending since 01.09.2010.

Perusal of the record shows that the matter is pending since 01.09.2010 and since then, summons have been issued to the accused a number of times. However, accused has not put in his appearance in the court till date. Moreover, the complainant in this case is a senior citizen aged about 69 years and the cheque amount involved in the case is Rs.20 lacs. Perusal of record further shows that the complainant has earlier furnished two new addresses of the accused, one of Noida (U.P.) and second of Mumbai (Maharashtra).

From the reports received on summons issued to the accused a number of times, would suggest that accused is willfully avoiding the service of summons and his presence cannot be secured in court without adopting coercive measures against him.

In the circumstances, issue B/W in the sum of Rs.50,000/- with one surety in the like amount through concerned SP/DCP at all the addresses of the accused returnable on 04.07.2012.”

(Emphasis supplied)

7. On 04th July, 2012, the learned Metropolitan Magistrate issued non-bailable warrants against the accused returnable on 17th August, 2012. On

17th August, 2012, respondent No.2 gave a fresh address of the petitioner namely Alphag - Epitome Projects, Golf View Corporate Towers, Sector-42, Golf Course Road, Gurgaon-122002, Haryana whereupon non-bailable warrants were issued at the above address which returned back with the report that no such person was working at the given address.

8. On 26th October, 2012, the learned Metropolitan Magistrate held that the accused was absconding to avoid execution of warrants and issued process under Sections 82 CrPC. The order dated 26th October, 2012 is reproduced hereunder:-

“NBW issued against the accused on 17.08.2012 remained unexecuted till date.

Perusal of the record shows that earlier warrants were issued against the accused a number of times. However, warrants could not be executed against the accused due to one reason or the other. It appears that accused has absconded/concealing himself to avoid the execution of warrants issued against him.

Hence, issue process u/s 82 Cr.P.C. against the accused on filing of PF for 06.12.2012. PF be filed within one week from today.

Process server who will execute the process against the accused will take care that there must be a gap of 30 days between the publication of the proclamation and the next date of hearing.

Put up on 06.12.2012 for the appearance of the accused/report.”

(Emphasis supplied)

9. On 10th January, 2013, the learned Metropolitan Magistrate recorded the statement of Head Constable Om Dutt who deposed that he executed the process under Section 82 CrPC by pasting a copy of the process at Alphag - Epitome Projects, Golf View Corporate Towers, Sector-42, Golf Course

Road, Gurgaon-122002, Haryana on 06th November, 2012. The learned Metropolitan Magistrate declared the petitioner as an absconder and issued process under Section 83 CrPC against the petitioner. Copy of the order was sent to S.H.O., P.S. Amar Colony with a direction to register a case under Section 174A IPC against the petitioner who failed to appear before the Court despite publication of proclamation under Section 82 CrPC.

10. On 22nd January, 2013, P.S. Amar Colony registered FIR under Section 174A IPC against the petitioner. The relevant portion of the FIR is reproduced hereunder:-

“Bhupinder Paul Gupta Vs. Core Builders Pvt. CC No.289/1, U/s 138 N.I. Act, 10.01.2013, present Complainant alongwith proxy counsel Sh. Rakesh Kumar. None for the accused despite repeated calls. Process server HC Om Dutt from PS Amar Colony, New Delhi in person let the statement of process server HC Om Dutt, who executed the process against the accused U/s 82 Cr.P.C. be recorded separately. Statement of process recorded separately, in view of the statement made by the process server, it is clear that process U/s 82 Cr.P.C. was duly executed against the accused Sunil Tyagi, but despite execution of process U/s 82 Cr.P.C. accused has not turned up till date, therefore, it may be concluded, that accused has ran away from the process of the court, hence, accused Sunil Tyagi is declared an absconder. Issued process U/s 82 Cr.P.C. against the accused. Also, copy of order be sent to SHO PS Amar Colony, New Delhi with direction to register a case against the accused Sunil Tyagi U/s 174A IPC because, accused Sunil Tyagi has failed to appear in the court despite the publication of proclamation U/s 82 Cr.P.C against him. Compliance report be filed in the court on the next date of hearing. Ahlmed is directed to send copy of order to the SHO PS Amar Colony, New Delhi within one week from today. Put up on 05.02.2013 for report on process to be issued against the accused U/s 83 Cr.P.C. and compliance

report to be filed by the SHO PS Amar Colony, New Delhi, short date is given as complainant is a senior citizen aged about 70 years. SD English (Dheeraj Mittal) MM-02, N.I.T. Act/South East, New Delhi 01.01.2013. D.O. to register a case and mark investigation to HC Pradeep No.642/SE as per direction of the Hon'ble Court. Sd. English Insp. Virender Jain SHO/Amar Colony, 22.01.2013."

11. On 09th June, 2013, an official from PS Amar Colony visited the residence of the petitioner's father at House No.301, Prabhat Nagar, near Saket, Meerut, U.P. and informed him that the petitioner had been declared Proclaimed Offender whereupon the petitioner engaged a counsel who inspected the Court record and then filed an application for cancellation of proceedings under Sections 82/83 CrPC on 15th July, 2013 on the ground that the petitioner was never served with the summons. It was submitted that the Meerut address given by respondent No.2 in the complaint was incomplete whereas the other addresses given by respondent No.2 were incorrect.

12. On 16th July, 2013, the petitioner settled the matter under Section 138 of the Negotiable Instruments Act with respondent No.2 for Rs.40,00,000/- as full and final settlement out of which Rs.19,00,000/- were paid before the Court on 16th July, 2013 and the balance amount of Rs.21,00,000/- was paid in instalments. On 16th July, 2013, learned Metropolitan Magistrate allowed the petitioner's application for recalling the process under Sections 82 and 83 CrPC and admitted the petitioner to bail.

13. On 11th March, 2016, the learned Metropolitan Magistrate compounded the offence under Section 138 Negotiable Instruments Act, in view of the settlement between the parties and acquitted the petitioner.

14. On 24th July, 2013, the police filed the charge sheet against the petitioner under Section 174A IPC before the learned Metropolitan Magistrate in which the Court took the cognizance of the offence and issued summons to the petitioner.

15. The petitioner is seeking quashing of FIR No. 27/2013 under Section 174A IPC, inter-alia, on the following grounds:

15.1 The petitioner has been declared a Proclaimed Offender without due service of summons/warrants. The Meerut address of petitioner furnished by respondent No.2 in the complaint was incomplete whereas the other four addresses furnished by respondent No.2 were incorrect. The petitioner is a permanent resident of House No. New 301, Prabhat Nagar, near Saket, Meerut, U.P. Respondent No.2 never furnished the said address at any stage of the proceedings before the Trial Court and the notices were never sent to the petitioner at the above address. The copy of the passport containing the above address has been filed in this petition.

15.2 An accused in respect of an offence under Section 138 of the Negotiable Instrument Act cannot be declared as a Proclaimed Offender under Section 82(4) CrPC which applies to only nineteen offences mentioned in Section 82(4) CrPC, namely under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 IPC.

15.3 Section 82 CrPC deals with two situations in which the action can be taken against the accused who is evading the process of warrant. Section 82(1) CrPC deals with cases where a person, against whom the warrant has been issued, has absconded or concealed himself so that such warrant cannot be executed. The Court in such cases is empowered to publish a written

proclamation requiring the accused to appear at a specific place and time, not less than 30 days from the date of publishing such proclamation. The failure of the accused to appear upon such proclamation is an offence under Section 174A IPC with imprisonment of a term which extend to three years or with fine or both.

15.4 Section 82(4) CrPC relates to offences punishable under Section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 IPC and upon failure of the accused to appear, as required by the proclamation, the Court is empowered, after making such inquiry as it thinks fit, to pronounce him as a Proclaimed Offender and make a declaration to that effect. The failure to appear upon the declaration of a person as a Proclaimed Offender under Section 82(4) CrPC is an offence under Section 174A IPC with imprisonment up to seven years or fine or with both.

15.5 The petitioner in the present case was accused of an offence under Section 138 of Negotiable Instrument Act. The petitioner is a permanent residence of Meerut and the summons were never issued at the given address nor were served on him and, therefore, the issuance ofailable warrants and non-ailable warrants against the petitioner is not valid in law. Notwithstanding the invalidity of the warrants issued, the petitioner's submission is that the petitioner cannot be declared as a Proclaimed Offender under Section 82(4) CrPC which applies only to 19 categories of offences mentioned therein. The declaration of the petitioner as a Proclaimed Offender is, therefore, contrary to the law.

15.6 The petitioner settled the matter with respondent No.2 by making the payment of Rs.40,00,000/- and the offence under Section 138 Negotiable

Instruments Act had been compounded and the petitioner had been acquitted.

Findings

16. The petitioner is a permanent resident of House No. New 301, Prabhat Nagar, near Saket, Meerut, U.P. However, the complete address of the petitioner was never furnished by respondent No.2 at any stage of the proceedings before the Trial Court and notices were never sent to the petitioner at the correct address. Respondent No.2 furnished four addresses of the petitioner which were all incorrect. The learned Metropolitan Magistrate declared the petitioner as a Proclaimed Offender without satisfying whether the petitioner was served with the summons or not. The learned Metropolitan Magistrate also failed to notice that the correct address of the petitioner had not been furnished by respondent No.2. This Court is satisfied that the petitioner was never served with the summons and he did not abscond and conceal himself. The declaration of the petitioner as a Proclaimed Offender is, therefore, not valid. That apart, the petitioner has not been charged with any of the 19 offences mentioned in Section 82(4) CrPC. Since the declaration of the petitioner as a Proclaimed Offender is invalid, the petitioner's prosecution under Section 174A IPC is liable to be quashed.

Conclusion

17. The petition is allowed and FIR No.27/2013 dated 22nd January, 2013, P.S. Amar Colony under Section 174A IPC and the proceedings emanating therefrom are hereby quashed.

18. Pending application is disposed off.

CRL M.C. 4438/2013

19. The petitioner is seeking quashing of the order dated 25th July, 2017 whereby the learned Metropolitan Magistrate declared the petitioner a Proclaimed Offender and the order dated 07th August, 2013 whereby the learned Chief Metropolitan Magistrate framed a charge against the petitioner under section 174A IPC.

20. On 13th March, 2004, FIR No. 174/2004 was registered against the petitioner under Sections 279 and 338 IPC at PS Pandav Nagar on the averments that the petitioner was driving motorcycle No. DL-7S-R-3033 and he hit the complainant Gauri Shankar at Ganesh Nagar Complex which resulted in grievous injuries to the complainant; and the accident occurred due to negligent driving of the motorcycle by the petitioner. The Police filed the charge sheet against the petitioner on 25th February, 2005. The learned Metropolitan Magistrate framed the charge against the petitioner on 22nd June, 2007.

21. On 12th January, 2009, the Investigating Officer submitted before the learned Metropolitan Magistrate that the complainant Gauri Shankar had expired whereupon the case was adjourned to 29th July, 2009.

22. The petitioner stopped appearing before the Metropolitan Magistrate under the impression that the case had been closed due to the death of complainant. However, proceedings continued in which non-bailable warrants were issued and thereafter, the process under Sections 82/83 CrPC was issued against the petitioner and the petitioner was declared as a Proclaimed Offender on 25th July, 2011.

23. S.H.O., PS Pandav Nagar has filed the status report according to which the complainant Gauri Shankar expired and his legal heirs could not

be traced despite the enquiries made.

24. The petitioner is seeking quashing of FIR No. 174/2004 under Section 174A IPC, *inter-alia*, on the following grounds:

24.1 The petitioner cannot be declared as a Proclaimed Offender under Section 82(4) CrPC as Section 82(4) applies only to the 19 categories of the offences mentioned in Section 82(4) CrPC.

24.2 Without prejudice, it is submitted that the petitioner was never served with the warrants before being declared as a Proclaimed Offender. It is submitted that the petitioner is a permanent resident of A-36/1, Gali No.10, West Vinod Nagar, Delhi - 110091.

24.3 The petitioner disputes the report dated 24th February, 2011 of Constable Shiv Kumar that the premises were found locked. It is submitted that the same Process Server, Constable Shiv Kumar, in his report dated 22nd July, 2011 in respect of the process under Section 83 CrPC had stated that he could not locate the house of the petitioner.

24.4 The Trial Court passed the order dated 25th July, 2011 in a routine manner without satisfying whether the petitioner was evading the arrest or not. It is submitted that the learned Metropolitan Magistrate did not record the statement of the process server. The statement of the process server is in a proforma filled up with hand which has been treated as a proof to the effect that the petitioner is evading the process of law. In the report dated 22nd July, 2011, the process server stated that he could not locate the house of the petitioner whereas in the evidence, the process server stated that there was no immovable property in the name of the accused which could be attached under Section 83 CrPC. The statement of the process server that he pasted the process on the petitioner's property is also incorrect as the process server

could not locate the petitioner's house as per the subsequent report.

24.5 Reliance is placed on *Md. Nazrul Islam v. State of Assam*, 2008 Cri LJ 3374, in which the Gauhati High Court held that before issuing the declaration, the Court must record reasons to believe that the person, against whom the proclamation has to be issued, is absconding or is concealing himself. The High Court further observed that mere return of warrants of arrest without execution without anything more does not authorize the Magistrate to issue an order for proclamation and attachment. Proclamation and attachment affect certain valuable rights of a person although that person might be facing a criminal case as an accused and the same is not to be interfered with in a casual and mechanical manner, but effected by strict adherence to the provisions of law.

Findings

25. This Court is satisfied that the petitioner was never served with the summons/warrants before being declared as a Proclaimed Offender and therefore, the declaration of the petitioner as a Proclaimed Offender is not valid. The Trial Court has passed the impugned order in a routine manner without satisfying whether the petitioner was avoiding or evading arrest. The declaration of the petitioner as a Proclaimed Offender is not valid and the charge against the petitioner under Section 174A IPC is liable to be quashed. That apart, the petitioner was not charged with any of the 19 offences mentioned in Section 82(4) CrPC.

Conclusion

26. The impugned order dated 25th July, 2017 declaring the petitioner as a Proclaimed Offender and the order dated 07th August, 2013 framing a charge against the petitioner under Section 174A IPC are hereby set aside and the

proceedings against the petitioner under Section 174A IPC are hereby quashed. The pending application is also disposed off.

Post script

27. During the course of the hearing dated 27th November, 2013, Mr. Gopal Subramaniam, learned senior counsel present in Court submitted that the orders under Section 82 CrPC were passed in a routine manner and guidelines be laid down to ensure that orders under Sections 82 and 83 CrPC are passed after following due process of law.

28. Vide order dated 21st November, 2014, this Court directed Delhi Police as well as CBI to file the status reports with respect to the Proclaimed Offenders. Delhi Police and CBI have filed their respective status reports. As per the status report of Delhi Police, 18,541 persons have been declared Proclaimed Offenders out of which 6000 Proclaimed Offenders were accused of heinous crimes. As regards CBI, 820 persons were declared as Proclaimed Offenders as on 31st December, 2014 out of which 184 Proclaimed Offenders and 193 Absconders were arrested.

29. Vide order dated 31st July, 2019, Delhi police and CBI were directed to file fresh status reports. As per the fresh status reports of the Delhi Police, number of Proclaimed Offenders have increased to 26,532 as on 31st September, 2019 out of which 3826 Proclaimed Offenders have been arrested, prosecution has been launched against 1601 Proclaimed Offenders and properties of 28 Proclaimed Offenders have been attached. As regards CBI, further 793 accused persons have been declared as Proclaimed Offenders between 1st January, 2015 to 31st October, 2019 out of which only 68 Proclaimed Offenders have been arrested, properties of 21 Proclaimed Offenders have been attached and prosecution has been launched against 2

Proclaimed Offenders under Section 174A IPC.

30. This Court appointed Mr. Dayan Krishnan and Mr. N. Hariharan, Senior Advocates as amicus curiae to assist this Court with respect to the need to consider the measures to be taken to ensure that orders under Sections 82 and 83 CrPC are passed after following the prescribed procedure and in cases, where the accused persons have been declared Proclaimed Offenders, effective steps should be taken to apprehend and prosecute such accused under Section 174A IPC.

31. Mr. Dayan Krishnan and Mr. N. Hariharan, Senior Advocates have given their valuable suggestions. Ms. Sonia Mathur, learned standing counsel for CBI and Mr. Rajiv K. Garg, Advocate have also given the suggestions. Learned counsels for the parties have also given their suggestions.

32. Vide order dated 07th March, 2014, Mr. S.S. Rathi, who was then posted in Delhi State Legal Services Authority (DSLISA) and had done extensive research on the subject, was requested to submit his research papers. Mr. Rathi submitted his research papers on 07th May, 2014 along with the draft of the suggested guidelines. As the matter progressed, Mr. Rathi submitted his first report which was considered by Delhi Police as well as CBI and after thorough deliberations, he submitted his final report before this Court whereupon Delhi Police as well as CBI were requested to give their suggestions.

33. Mr. Rathi in his report has dealt with the provisions relating to the declaration of a Proclaimed Offender at the stage of investigation as well as trial and post conviction. However, this Court is dealing with the declaration of an accused as a Proclaimed Offender during the trial and would be

restricting the discussion to the provisions relating to the trial.

34. This Court is of the view that declaring a person as a Proclaimed Offender leads to a serious offence under Section 174A IPC which is punishable for a period upto 3 or 7 years. It affects the life and liberty of a person under Article 21 of the Constitution of India and it is necessary to ensure that the process under Sections 82 and 83 CrPC is not issued in a routine manner and due process of law should be followed. The second important aspect is that once a person has been declared as a Proclaimed Offender, it is the duty of the State to make all reasonable efforts to arrest him and attach his properties as well as launch prosecution under Section 174A IPC.

35. This Court is of the view that guidelines are necessary to be laid down by this Court in this regard. Mr. Vikas Pahwa, Senior Advocate; Mr. Rajshekhar Rao, Advocate and Prof. (Dr.) G.S. Bajpai, Professor of Criminology and Criminal Justice, National Law University, Delhi are appointed as Amicus Curiae in addition to Mr. Dayan Krishnan, Senior Advocate to assist this Court in framing these guidelines. The Registry shall send the digitalized copy of entire record to the learned Amici Curiae within one week. The learned Amici Curiae shall file brief note of submissions within a period of four weeks.

36. Commissioner of Delhi Police and Director, CBI are directed to form an Internal Committee in their respective organizations to formulate the suggestions with respect to the issues concerning the Proclaimed Offenders. The Committee shall *inter alia* consist of officers heading the Policy Division as also those having experience of investigating inter-country offences and also the concerned Standing Counsels appearing for the

respective agencies before this Court. The report of the Committee be filed under the signatures of Commissioner of Delhi Police and Director, CBI respectively within a period of four weeks.

37. List for further hearing as part-heard matters on 16th February, 2021.

38. The order be uploaded on the website of this Court forthwith.

JANUARY 07, 2021
ak/dk/ds

J.R. MIDHA, J.

भारतमेव जयते