

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

+ **CRL.M.C. 791/2014**

Date of decision: 22nd May, 2014

DR SHAHNAWAJ Petitioner
Through: Mr. A.C. David, Adv.

versus

STATE & ORS. Respondents
Through: Mr. Naveen Sharma, APP for
the State

**CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH**

VED PRAKASH VAISH, J. (ORAL)

1. By this petition under Section 482 of the Code Criminal Procedure, 1973 (hereinafter referred to 'Cr.P.C.'), the petitioner has challenged order dated 30.05.2013 passed by learned Additional Sessions Judge (Central), Delhi whereby criminal revision filed by the petitioner was dismissed.

2. In nutshell, the brief facts of the case are that the petitioner/ Dr.Shahnawaj lodged FIR No.670/2007 under Sections 325/34 IPC registered at PS Darya Ganj, New Delhi. On completion of investigation, charge-sheet was filed against accused, Mohd. Yusuf and Rizwan Yusuf. Vide order dated 06.02.2010, summons were issued against the accused. Thereafter, non-bailable warrants were issued against Respondent No. 2/Mohd.Yusuf. Vide order dated 09.12.2010, learned Metropolitan Magistrate, Delhi issued process under Section 82 Cr.P.C. against Respondent No. 2 and directed for publication in

one leading newspaper having circulation in the concerned area. Vide order dated 18.02.2011, trial Court observed that copy of newspaper has not been filed. The case was adjourned for filing the copy of newspaper in which publication was made and notice was issued for the statement of process server. Vide order dated 20.09.2011, fresh process under Section 82/83 Cr.P.C. was issued against Mohd. Yusuf. On 22.12.2011, link Metropolitan Magistrate, Delhi passed an order that process under Section 82 Cr.P.C. and NBW issued against the accused had been received back executed and the matter was adjourned to 05.01.2012 for consideration. Vide order dated 05.01.2012, the trial Court issued fresh notice to the process server through concerned DCP to appear in person for making the statement regarding the execution of process under Section 82 Cr.P.C. against accused/ Respondent No. 2 and process under Section 83 Cr.P.C. was issued against Respondent No. 2 through concerned SHO.

3. The Respondent No. 2 moved an application dated 15.03.2012 for cancellation of NBW, withdrawal of proceedings under Section 82/83 Cr.P.C. and for bail. Respondent No. 2 appeared before the trial Court on 31.03.2012 and proceedings under section 82/83 CrPC were stayed against him till 2.4.2012. On 15.05.2012, the petitioner/complainant opposed the said application and contended that the publication of process under Section 82/83 Cr.P.C. was made in the newspaper, therefore, offence under Section 174A IPC was made out and requested that the said application be dismissed. The trial Court observed that Section 174A IPC is attracted only when the accused has been declared proclaimed offender under Section 82(3) Cr.P.C. after provisions of Section 82(1) Cr.P.C. has been complied with. Since, the process server has not appeared to make a statement and the Court has not declared accused/ Respondent No. 2 as proclaimed offender, so the

provision under Section 174A IPC could not be said to be attracted against the accused. The trial Court further observed that as the offence under Section 325/34 IPC is a bailable offence, non-bailable warrants and process under Section 82/83 issued against Respondent no. 2 stands cancelled and, therefore, respondent No.2/accused Mohd. Yusuf was admitted to bail.

4. Against the said order, dated 15.5.2013, the petitioner preferred Crl. Rev. No.77/13 which was dismissed by learned Additional Sessions Judge (Central), Delhi.

5. Feeling aggrieved by the said order, the petitioner has filed the present petition.

6. Learned counsel for the petitioner submits that the process under Section 82 Cr.P.C. was published in the newspaper on 19.11.2011 but the respondent No.2 did not appear before the trial Court within 30 days from the date of publication of proclamation. According to the counsel for the petitioner, offence under Section 174A IPC is made out.

7. At this juncture it is necessary to reproduce Section 82 of the Cr.P.C. which reads 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 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 Indian Penal Code (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)."

No doubt, the proclamation in terms of Section 82(1) of Cr.P.C. had been issued by the trial Court/learned Metropolitan Magistrate against respondent No.2 as is apparent from the perusal of trial Court record as requisitioned by this Court. It is

also equally true that copy of said proclamation was also directed to be published in a daily newspaper having circulation in the locality where respondent was ordinarily residing as per his last given address available on record as stipulated by Clause (ii) of Sub Section(2) of Section 82 Cr.P.C. Still there is no force in the contention raised on behalf of the petitioner that learned trial Court was duty bound to issue direction for registration of FIR in respect of the offence under Section 174A IPC or in any case, offence under Section 174A IPC ought to have been invoked against respondent No.2/accused Mohd. Yusuf. The reason is quite obvious that law enjoins upon certain conditions on fulfilment of which alone, any person can be declared proclaimed offender under the law.

8. It is crystal clear from the bare perusal of the provisions contained in Section 82(1) and (2) of Cr.P.C. that there are certain requirements which have to be complied with and the requisite procedure as provided therein which needs to be followed.

9. Law is not that once a proclamation is issued against any person by the Court of law, there is no option available to the Court issuing such proclamation but to declare said person as a proclaimed offender. Rather, the law prescribes the mode and the manner in which such proclamation has to be published. For the said purpose, it would be useful to refer to sub-section (1) of Section 82 Cr.P.C. which specifically provides that proclamation requiring any person to appear at a specified time, must be given complete thirty days time for his/her appearance from the date of publication of such proclamation.

10. Further, clause (i) of Sub Section (2) of Section 82 Cr.P.C. expressly lays down the manner in which the proclamation has to be published by mentioning that:-

- (i) such proclamation needs to be publically read in some conspicuous place of the locality where such person ordinarily resides;
- (ii) such proclamation has to be affixed at some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such locality; and
- (iii) a copy of such proclamation needs to be affixed at some conspicuous part of the Court room.

11. It is only after the aforesaid conditions together are fulfilled, Court is supposed to make a declaration regarding proclaimed offender. Thus, the Court is enjoined upon to apply its mind and to consider as to whether all the conditions as mentioned in Sub Section (1) and (2) (i) as also envisaged in clause (ii) of Sub Section (2) of Section 82 Cr.P.C., in case direction has been issued for publication of copy of proclamation in daily newspaper has been issued, have been complied with or not.

12. It needs no emphasis that in case any of the aforementioned conditions is not fulfilled or found to have been complied with, then Court is well within its right to reject the report and to issue fresh proclamation against said person according to law.

13. In the instant case, mere declaration had been issued against the respondent No.2, but learned Metropolitan Magistrate was yet to apply his mind in order to satisfy himself and in order to ensure that all the conditions required by Section 82(1) and (2) (i) (ii) Cr.P.C. had been fulfilled. Before learned Metropolitan Magistrate could actually do so, the respondent No.2 appeared before the Court and moved an

appropriate application dated 15.03.2012 for cancellation of NBWs, withdrawal of proceedings under Section 82/83 Cr.P.C. and for bail.

14. Under the facts and circumstances, there is no illegality, infirmity or impropriety found or pointed out by the counsel for petitioner in the impugned order dated 15.05.2012 passed by learned Metropolitan Magistrate in rejecting the request of the petitioner for invoking Section 174A IPC against respondent No.2 or in the order dated 30.05.2012 passed by learned Additional Sessions Judge (Central) in affirming the order of Metropolitan Magistrate albeit for different reasons. Accordingly, the petition is hereby dismissed.

15. The trial Court record be sent back immediately.

(VED PRAKASH VAISH)
JUDGE

May 22, 2014
gm