

Manoj Tandon vs State on 25 March, 2021

Author: Anu Malhotra

Bench: Anu Malhotra

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 90/2021 & CRL.M.A. 4749/2021
MANOJ TANDON

..... Petitioner

Through: Mr. Ajay Kumar Pipaniya, Ms.
Pallavi Pipaniya, Advs.

versus

STATE

..... Resp

Through: Mr. Raghuvinder Varma, APP f
State with SI Mukesh Kumar,
Kalkaji.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER

% 25.03.2021 The matter is indicated to be listed for 19.04.2021 and is taken up on CRL.M.A. 4749/2021 filed on behalf of the petitioner seeking an early hearing submitting to the effect that because of the petitioner having been declared a Proclaimed Offender vide the impugned order dated 23.03.2018 of the learned MM-06, South-East, Saket in FIR No.1052/2006, under Sections 186/332/353/34 of the Indian Penal Code, 1860, the petitioner apprehends arrest.

In the interest of justice, the matter has been taken up for hearing and CRL.M.A. 4749/2021 is thus allowed.

Vide the present petition, the prayer made by the petitioner seeking the setting aside of the impugned order dated 23.03.2018 as averred hereinabove qua FIR No.1052/2006, under Sections 186/332/353/34 of the Indian Penal Code, 1860, PS Kalkaji submitting to the effect that the said impugned order erroneously declared the petitioner a Proclaimed Offender Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:05.04.2021 19:10:44 This file is digitally signed by PS to HMJ ANU MALHOTRA.

in terms of Section 82(4) of the Cr.PC, 1973 despite the factum that the offence qua which the FIR has been registered do not fall within the ambit thereof as prescribed under Section 82(4) of the Cr.PC, 1973, which reads to the effect:

"82(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under Sections 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."

Inter alia reliance is sought to be placed on behalf of the petitioner on the verdict of this Court in Manoj Tandon Vs. State in CrI.M.C.1961/2020 whereby there is a reference made to the verdict of this Court in Sanjay Bhandari vs. State in CrI.Rev.Pet.No.223/2018 observing to the effect:

"person who is accused of offences other than the ones enumerated in section 82(4) and qua whom a proclamation has been published under section 82(1) would be a 'proclaimed persons' and not deemed 'proclaimed offender'. There is no provision other than section 82(4) for pronouncing such a person as a proclaimed offender and 82(4) applies only in respect of persons accused of sections of Indian Penal Code, 1860 enumerated in the section."

with reliance having been placed on behalf of the petitioner on the verdict of the Hon'ble High Court of Rajasthan in Rishabh Sethi vs. State of Rajasthan and Ors. in Petition No.5767/2017 wherein it has been observed to the effect:

"it is obvious that no reference has been made to the offences Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:05.04.2021 19:10:44 This file is digitally signed by PS to HMJ ANU MALHOTRA.

under the Prevention of Corruption Act in sub-section (4) of Section 82 Cr.P.C., and also of the offence under section 120-B IPC. Unless a person is charged with the offences as mentioned in sub-section (4) of Section 82 Cr.P.C. and he fails to appear at specified place and time required by the proclamation issued against him, the Court may not pronounce him as a proclaimed offender and make a declaration to that effect."

Submissions have been made on behalf of either side. Apparently, the provisions of Section 82(4) of the Cr.PC, 1973 which have been inserted w.e.f.23.06.2006 make it apparent that qua the offences other than those detailed under Section 82(4) of the Cr.PC, 1973 i.e. qua the offence other than Sections 302, 304, 364, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460, none of them are prescribed therein qua which a person can be declared a Proclaimed Offender though a person may be declared a proclaimed person as observed vide the order of this Court in Sanjay Bhandari (supra) qua whom the provisions of the first limb of Section 174A would apply, whereas qua the offences punishable under Section 82(4) of the Cr.PC, 1973, the said offences would be punishable under the second limb of the FIR.

It is apparent thus that the impugned order dated 23.03.2018 of the learned MM-06, South-East, Saket in FIR No.1052/2006, under Sections 186/332/353/34 of the Indian Penal Code, 1860 declaring the petitioner a Proclaimed Offender has to be set aside and is thus set aside.

The petition is disposed of.

The date 19.04.2021 is cancelled.

ANU MALHOTRA, J MARCH 25, 2021/vm Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:05.04.2021 19:10:44 This file is digitally signed by PS to HMJ ANU MALHOTRA.