

Bijender Singh Lather vs Govt Of Nct Of Delhi on 28 February, 2023

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 2647/2021
BIJENDER SINGH LATHER

Through: Mr.Ajayinder Sangwan,
Rathi, Mr.Dev
Mr.Pradeep Singh, M
Mr.Ramesh C Singh,
Johar, Mr.Jitender
Mr.Summinder Paswan

versus

GOVT OF NCT OF DELHI

Through: Mr.Sunil Kumar Gautam,
State with Inspecto
EOW.
Mr.Sunil Dalal, Sr
Mr.Sandeep Chaudhar
Singh, Ms.Manisha S
Ms.Pratibha Varun,
R2.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA
ORDER

% 28.02.2023

1. This petition is filed against the impugned order dated 12.10.2021 passed by the learned Trial Court whereby the petitioner has been declared as Proclaimed Absconder. The learned counsel for petitioner submits if one peruse sub-Section (4) of Section 82 Cr PC, the petitioner can be declared Proclaimed Offender only if he is an accused of offence 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. It is stated petitioner is not an accused of any above offences as mentioned in Section 82(4) CrPC and as such the impugned order is wrong.

2. I have perused the impugned order as also Section 82 Cr P C.

3. The Section 82 Cr P C read 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 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 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).

4. A bare perusal of Section 82 CrPC would reveal if the conditions specified under sub-Section (1) to (3) of Section 82 Cr P C are complied with then accused can be declared as Proclaimed Person, but in case he is involved in any of the offences as mentioned in sub-Section (4) of Section 82 Cr P C, then he can be declared as a Proclaimed Offender.

5. The issue has been deliberated upon by the Coordinate Bench in Sanjay Bhandari vs State Crl.Rev. P. No.223/2018 decided on 31.07.2018 wherein the Court has declared such person as Proclaimed Person. It notes as under:-

28. Under section 82 (1) Cr.P.C. a proclamation can be issued only against a person against whom a warrant has been issued and has absconded or is concealing himself so that such warrant cannot be executed. Clearly, the scope and operation of sections 174 and 174A are different.

However, there may be an overlap in their operation but largely they operate in different spheres. Persons covered by section 174A second part would be a sub set of persons covered by section 174A first part who in turn would be subset of persons covered by section 174 IPC.

29. Further it may be seen that sections 83, 84 and 85 Cr.P.C., which provide for attachment of property of person absconding, claims & objections thereto and release, sale and restoration of attached properties of persons qua whom a declaration under section 82 has been issued, uses the expression 'Proclaimed Person'.

30. The provisions of Section 82 to 84 become applicable on the issuance of the proclamation and are not dependent on the declaration under section 82(4).

31. I am thus of the view that a 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 person' and not a deemed 'Proclaimed Offender'.

32. As noticed above, 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 IPC enumerated therein.

33. In view of the above, order dated 08.01.2018 declaring the petitioner as a proclaimed offender is not sustainable and is accordingly quashed to the said extent. However, this 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.

6. In these circumstances, the impugned order dated 12.10.2021 passed by the learned Trial Court stands modified to an extent the petitioner herein shall be treated as Proclaimed Person.

7. The petition stands disposed of in above terms. Pending application, if any, also stands disposed of.

YOGESH KHANNA, J.

FEBRUARY 28, 2023 M