

(2012) 11 P&H CK 0138

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 24202 of 2011 (O and M)

Sanjay Sarin

APPELLANT

Vs

State (Union Territory,
Chandigarh)

RESPONDENT

Date of Decision: Nov. 30, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482, 82, 82(1), 82(4), 82(4)
- Penal Code, 1860 (IPC) - Section 120B, 120B, 174A, 174A, 279

Citation: (2013) CriLJ 408

Hon'ble Judges: Vijender Singh Malik, J

Bench: Single Bench

Advocate: R.S. Cheema with R.K. Trikha, for the Appellant; J.S. Toor, APP, U.T. Chandigarh and P.S. Ahluwalia, for the Respondent

Final Decision: Allowed

Judgement

Vijender Singh Malik, J.

Sanjay Sarin, the petitioner has brought this petition under the provisions of section 482 Cr.P.C. for quashing of order dated 1.6.2011 (Annexure P 24) passed by learned Judicial Magistrate Ist Class, Chandigarh declaring the petitioner a proclaimed offender. Smt. Payal Sarin lodged FIR No. 131 dated 26.6.2010 at Police Station Sector 3, Chandigarh for an offence punishable under sections 406, 498A, 506 read with section 120-B of Indian Penal Code. During the course of the proceedings of the case, presence of Sanjay Sarin, the husband of Payal Sarin was sought to be secured, but he was not traceable. When the processes of bailable warrants and non-bailable warrants could not succeed to secure the presence of the petitioner, the Magistrate issued proclamation u/s 82 Cr.P.C. The petitioner then moved an application before the Magistrate with a prayer not to proceed with the proceedings of declaring him a proclaimed offender at that stage.

2. Briefly stated, he claimed in his application that he is not absconding but is exhausting his legal remedies. According to him, after dismissal of his application for anticipatory bail by the High Court, he has filed a plea for anticipatory bail before Hon'ble Apex Court and the same had not come up for hearing on account of the ongoing summer vacation there. He also claimed that sections 406, 498-A, 506 read with Sec. 120-B IPC, for which he has been proceeded against, did not fall within the amended provisions of section 82 (4) Cr.P.C. and, therefore, he could not be declared a proclaimed offender. Taking reply thereto, the Magistrate rejected his plea and since proclamation already stood published against the petitioner, he recorded statement of the serving constable and declared the petitioner a proclaimed offender.

3. Learned senior counsel for the petitioner has submitted that FIR No. 131 dated 26.6.2010 registered at Police Station Sector 3, Chandigarh is for an offence punishable under sections 406, 498-A, 506 read with section 120-B IPC. According to him, none of these sections find a mention in the amended provisions of section 82(4) Cr.P.C. According to him, u/s 82 Cr.P.C., though a proclamation can be issued against a person absconding, yet a person who does not appear despite publication of the proclamation can be declared a proclaimed offender only if he is 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 IPC. According to him, a person, who is not accused of an offence under the aforesaid sections, cannot be declared a proclaimed offender and the only proceeding that can be taken against him after publication of the proclamation is that his property can be attached u/s 83 Cr.P.C.

4. Coming to the interpretation to be given to sub-section (4) of section 82 Cr.P.C., learned senior counsel has submitted that when the words of a statute are clear, plain and unambiguous and reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of the consequences. He traced the law on the point from a decision of Hon'ble Supreme Court of State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj, to support himself on this point. According to him, another principle to be applied while construing a provision in the amending Act is that it should be construed in such a manner which does not result in running it ineffectual.

5. Learned senior counsel for the petitioner has referred to the provisions of Sec. 174-A IPC to support his submission that a person can be declared proclaimed offender only if he is an accused of an offence punishable under sections mentioned in section 82(4) Cr. P.C. and the other persons who do not fall in this provision, would be the persons against whom proclamation has been published under sec-section (1) of section 82 Cr. P.C. According to him, section 174-A clearly makes out two categories of persons against whom proclamation can be published u/s 82(1) Cr.P.C. and prescribes different punishments for the two categories. According to him, for the person, who failed to appear at the specified place and the specified

time as required by a proclamation published under sub-section (1) of section 82 Cr. P.C., the punishment prescribed is imprisonment for a term which may extend to 3 years or with fine or with both. According to him, however, if such a person, against whom declaration of proclamation has been made under sub-section (4) of section 82 Cr. P.C., then he shall be punished with imprisonment for a term which may extend to 7 years and shall also be liable to fine. He has submitted that this section itself makes it clear that if proclamation is issued against a person u/s 82(1) Cr. P.C., declaration of proclaimed offender shall be made only with regard to the persons who are accused of an offence punishable under the sections mentioned in sub-section (4) of section 82 Cr. P.C. In support of his submission, learned senior counsel for the petitioner has cited before me a Single Bench decision of this court in *Rahul Dutta v. State of Haryana*, 2012 (2) RCR (Cri.) 585. In this case, nomenclature for the person against whom proclamation has been published, but is not accused of an offence punishable u/s 82(4) Cr.P.C., is of proclaimed person. It is laid down in this decision that a person who is evading his arrest in a case for an offence punishable under sections 406, 498-A, 506 read with section 120B IPC can be declared a "proclaimed person" and not a "proclaimed offender". He has also cited another judgment of a Co-ordinate Bench of this court in *Satinder Singh Vs. The State of U.T. and Another*,. In the said case for an offence punishable under sections 279 and 337 IPC, the accused was declared a proclaimed offender. It has been held that the accused could not be declared a proclaimed offender for an offence which is not mentioned in section 82 (4) Cr.P.C. The aforesaid law appears in para No. 4 of the judgment, which is as under:-

4. The only contention raised by learned counsel for the petitioner is that the Magistrate could not have declared the petitioner as proclaimed offender as he is not accused of any of offences specified under sub-section (4) of Section 82 Cr. P.C. and as such he could be declared proclaimed offender. So far as the order declaring the petitioner otherwise as proclaimed offender is concerned, the same is in contravention to sub-section (4) of Section 82 Cr.P.C. and thus liable to be quashed.

6. Examining the issue from another angle, learned senior counsel for the petitioner has submitted that the responsibility to arrest the persons who have been declared proclaimed offenders is heavy upon the police officers under chapter IV Cr. P.C. and only serious offences are now grouped u/s 82(4) Cr. P.C. so that the heavy duty could be limited to arrest only those persons who have been declared proclaimed offenders. According to him, taken in the light of the aforesaid discussion, the declaration of the petitioner a proclaimed offender vide the order dated 1.6.2011 (Annexure P 24) is against the provisions of law and, therefore, liable to be set-aside.

7. Learned standing counsel for Union Territory, Chandigarh assisted by learned counsel for the complainant has submitted, on the other hand, that any person against whom proclamation u/s 82(1) Cr. P.C. has been published, can be declared a proclaimed offender irrespective of the offence committed. According to him, this

view is supported by two judgments of Co-ordinate Benches of this court in *Rajiv v. State of Haryana*, Criminal Misc. No. M.-30146 of 2011, decided on 12.12.2011 and *Smt. Deeksha Puri v. State of Haryana*, Criminal Misc. No. 359 of 2012, decided on 16-10-2012. He has submitted that the petitioner has been rightly declared a proclaimed offender by the Magistrate and the order does not justify interference with the same.

8. Learned counsel for the complainant assisting learned counsel for Union Territory, Chandigarh has submitted that sections have been mentioned in this provision only with a view to lay down that further enquiry would be required in those cases. According to him, this further enquiry would not be required in relation to the cases of the persons accused of offences other than those mentioned in sub-section (4) of section 82 Cr.P.C. Learned counsel for the complainant has further submitted that petition for anticipatory bail of the petitioner was dismissed on 17.12.2010. According to him, for six months, he did not do anything and then filed SLP. According to him, he now claims that he could not be declared a proclaimed offender.

9. Replying the aforesaid submissions, learned senior counsel for the petitioner has submitted that the decision in *Rajiv*'s case (supra) is per incuriam because the matter under consideration in that case was declaration of a proclaimed offender vide order dated 23.3.2002, much earlier to the date of amendment of section 82(4) Cr.P.C.

10. A simultaneous reading of section 82 Cr.P.C. and 174 A IPC would clearly point to the situation where the persons against whom proclamation is issued u/s 82(1) Cr.P.C. would be divided into two categories. The first category would be of the persons who are accused of an offence other than the one mentioned in section 82(4) Cr.P.C. and the second category of the persons accused of an offence mentioned in section 82(4) Cr.P.C. For these two categories of persons, punishment is differently provided by section 174A IPC.

11. The enquiry, about which learned counsel for the complainant has submitted, is not an enquiry to be made in case of a person accused of an offence punishable under the sections of Indian Penal Code mentioned in sub-section (4) of section 82 Cr.P.C. after declaring him a proclaimed offender. This enquiry is to be made in respect of the persons accused of those offences before declaring them proclaimed offenders. This is an enquiry which precedes the declaration of a person accused of an offence under the aforesaid sections a proclaimed offender. A fine distinction has been made in *Rahul Dutta*'s case (supra) between the aforesaid two categories by giving them the names "proclaimed persons" and "proclaimed offenders". In these circumstances, although the impugned order declaring the petitioner a proclaimed offender cannot be sustained, however, he is a proclaimed person against whom proclamation stands published and he is liable to be proceeded u/s 83 Cr.P.C. by way of attachment of his property as also u/s 174A IPC. The petition is allowed in the

above terms.