

Vinod Kumar Khanna Vs. State

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Court : Delhi

Decided On : May-13-1988

Reported in : 35(1988)DLT167

Judge : P.K. Bahri, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 453 of 1988

Appellant : Vinod Kumar Khanna

Respondent : State

Advocate for Pet/Ap. : D.C. Mathur and; S.K. Saxena, Advs

Judgement :

P.K. Bahri, J.

(1) This petition has been brought under the Section 482 of the Code of Criminal Procedure for quashing the order dated April 8, 1988 passed Shri R.L. Chugh, Chief Metropolitan Magistrate, by which he had issued a proclamation under Section 82 of the Code of Criminal Procedure requiring the appearance of the petitioner as an accused in case R.C, 1 of 1988, on the 24th May 1988.

(2) The facts in brief are that the case has been registered by the C.B.I, under Sections 3 & 5 of the Official Secrets Act, 1923 read with Section 120-B of the Indian Penal Code against the petitioner and one Lt. Gen. (Retd) Nirmal Puri. According to the C.B.I, this petitioner was required to appear before the Investigating Officer on 2nd March, 1988 vide notice dated 23rd February 1988. But the petitioner who is in foreign country could not be served and an official of the company of which the petitioner is the Chairman had informed that the petitioner would be apprised about this on his return to India. Another notice was issued for appearance of the petitioner before the Investigating Officer. Again the same could not be served as the petitioner was out of India and a letter was received from the official of the company mentioning that the petitioner had been already intimated about the said notice and the petitioner would appear before the Investigating Officer on his return to India. As the petitioner did not turn up, an application was moved dated 3rd March, 1988 before the Chief Metropolitan Magistrate for issuance of warrants of arrest of the petitioner. The warrants of arrest of the petitioner also could not be executed and thereafter the application was moved on 29th March, 1988 for issuance of proclamation under Section 82 and attachment under Section 83 of the Cr. P.C. The impugned order was made by the C.M.M. for issuance of the proclamation on application dated 28th April, 1988 of the C.B.I.

(3) The learned counsel for the petitioner has vehemently contended that at no point of time the petitioner had evaded the notices issued by the Investigating Officer for his appearance or the warrants of arrest hence the petitioner could not be declared as absconding from the law and hence no steps could be taken for issuance of a proclamation under Section 82 of the Act. He has placed reliance on N.M. V. Vellayappa Chettiar v. Alagappa Chettiar : AIR1942 Mad289 ; and on K K. Jajodia v. State C.B.I. : 33(1987)DLT64 . It has been argued by the learned counsel for the petitioner that at the time the two notices were issued by the I.O. for appearance of the petitioner before the I.O., it was not mentioned in those notices that the petitioner is an accused person and his presence is required for his interrogation. The notices only required the presence of the petitioner before the I.O. in the process of investigation of the case. He has argued that as far as warrants of arrest are concerned, they never came to the knowledge of the

petitioner and thus from the facts and circumstances appearing, the C.M.M. was wrong in coming to the conclusion that the petitioner was evading the arrest.

(4) On the other hand counsel for the C.B.I, has argued that the petitioner is in the know of the case and is in fact has absconded and there is information available with the C.B.I, that the petitioner has been taking steps to dispose of his immovable property situated in India by executing a power of attorney. He has placed on K.T.M.S. Abdul Coder v. Union of India 1977 CrL. L.J. 1708. It is evident that if a particular accused is evading arrest intentionally then he can be declared absconder and a proclamation under Section 82 of the Code of Criminal Procedure can be issued. It is true that in the initial notices sent by I.O. for appearance of the petitioner it is not made clear whether the petitioner is an accused person in the said case or not. But the fact remains that the Private Secretary of the petitioner had intimated the petitioner about the said notices issued by the I O. requiring the appearance of the petitioner before I.O. At any rate when warrants of arrest have been issued, the petitioner's officials at Delhi would not have remained unaware about the warrants of arrest issued against the petitioner and they would have in normal way taken steps to inform the petitioner, still the petitioner did not care to come to India and appear before the Investigating Officer for interrogation. The petitioner's presence is obviously needed by the police for thorough investigation of the case involving serious offence. I had put to counsel for the petitioner as to when the petitioner could voluntarily appear before the I.O. The counsel for the petitioner stated that the petitioner cannot come till the end of August 1988 as the petitioner is involved in a joint project with the Mauritius Government for construction of some five star hotel. The petitioner has not come over to India since end of 1986. It is not possible to believe that the petitioner is unaware that he is an accused in the said case. The C.B.I, has apprehension that the petitioner might dispose of his assets and properties by executing some power of attorney in favor of some person and then it might become difficult for the C B.I. to enforce the return of the petitioner to India to face the criminal case. The inherent power under Section 482 of the Act can be exercised only if it is shown that the impugned order passed by the lower court is perverse or against the law. In the present case the Chief Metropolitan Magistrate could form the opinion from the circumstances placed before him that the petitioner is evading the arrest in the

said case. So he could issue the impugned proclamation under Section 82 of the Act.

(5) In the case of N.M.V. Vellyappa (supra) it was laid down that before a proclamation under Section 87 or an attachment under Section 88 (of the old Criminal Procedure Code) can be issued, it must be shown that accused is absconding or concealing himself so that the warrants of his a nest cannot be executed. It was also opinion that where after the issuance of the warrants the Magistrate is informed that the accused as already left India then the orders of proclamation and attachment are without jurisdiction inasmuch as since the accused could not have known of the warrant. This is distinguishable because here the circumstances show that the petitioner himself must have been apprised about the issuance of the warrants of arrest against him by his officials working in Delhi. In the case of K.K. Jajodia (supra) no ratio of law has been laid down which can be helpful to the petitioner in the present case.

(6) In the case of K.T.M.S. Abdul Coder (supra) the facts in brief were that two of the petitioners were citizens of India but it was found that although they were not residing in India, yet they had knowledge of the detention order passed against them, even though they had left India before passing of the detention orders but it was held that if they remain outside India with a view to defeat or delay the enforcement of the order of detention, they have to be treated as absconding persons. This is a Full Bench judgment of the Madras High Court and is applicable to the facts of the present case The petitioner who is well aware of the warrants of arrest issued against him and also regarding the notices issued by the Investigation Officer is obviously evading arrest by not coming to India at the earliest to face the criminal case, hence he can be treated as absconder. It cannot be difficult for the petitioner to come to India at a short notice. The fact that he has not shown any inclination to come to India in spite of knowing that he is involved in a criminal case could lead to inference that he is absconding and has no intention to come to India. Hence I find no merit in this petition which I, hereby dismiss.

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