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Court : Delhi

Decided On : Sep-14-2001

Reported in : 2002CriLJ1284; 93(2001)DLT804; II(2001)DMC705; 2001(60)DRJ657

Judge : Mr. S.K. Agarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 82, 82(2), 83 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 406 and 498-A

Appeal No. : Crl. M. (M) No. 206/2000

Appellant : Sunil Kumar

Respondent : State and anr.

Advocate for Def. : Ms Richa Kapur, Adv. for State

Advocate for Pet/Ap. : Mr. Mir Akhtar Hussain and; Dr. Aurobindo Ghosh, Advs

Judgement :

S.K. Agarwal, J.

1. By this petition under Section 482 of the Code of Criminal procedure, 1973 (for short, Cr.P.C.), petitioner is seeking quashing of the FIR No.265/1996, P.S. Tilak Marg, under Section 498-A/406 IPC and consequent proceedings thereon and for

quashing of the order dated 24.9.1996 issuing proclamation under Section 82 Cr.P.C., and the order dated 4.10.1996, declaring the petitioner as a proclaimed offender.

2. Brief facts necessary for disposal of this petition are: on 7.3.1996, Ms. Bina lodged a report alleging therein that she was married to the petitioner on 14.2.1994, who was employed as an electrician at Muscat in Oman. After the marriage when her husband went abroad, she started living with family of the elder brother of her husband; her husband after going abroad did not write any letter to her nor sent any money, to meet the household expenses. One day, elder brother of her husband complained, to her father that in the marriage they were not given scooter, colour T.V. etc. She was told that the petitioner would be coming in the month of April, 1996, to attend the marriage of his niece and that in December, 1995, she had gone to stay with her parents, as her mother was unwell. On 24.2.1996, when she came back to stay at her in-law's house, hoping that her husband would come in April 1996, she was told that during her absence, her husband had come to India and stayed in India with them and his sisters at Jalandhar and at Garima Garden (U.P.) and had gone back. Then she realised that her in-laws, in conspiracy with her husband, wanted to get rid of her. Her sister-in-law told her that the petitioner did not like her. On the basis of the above allegations the above noted FIR was registered. Petitioner did not like her. On the basis of the above allegations the above noted FIR was registered. Petitioner did not participate in the investigation. After investigations, challan was filed against the petitioner and his other relations and cognizance was taken; petitioner did not appear despite warrants. He was declared a Proclaimed Offender. Trial proceeded against the relations of the petitioner and vide order dated 18.5.1999, the trial court discharged them and file was consigned to the record room to be revived as and when he was arrested. When the petitioner came from abroad, he was arrested at the Airport. Thereafter, the above petition was filed for quashing of the FIR and the order declaring him a Proclaimed Offender.

3. Learned counsel for petitioner firstly, argued that assuming the allegations made in the FIR to be true, no offence under Section 498-A and 406 IPC is made out against the petitioner. Learned APP for State vehemently argued that a new

dimension has been given to the concept of 'cruelty' by Explanationn (a) to section 498-A IPC and any willful conduct which is of such a nature as is likely to drive a woman to commit suicide or cause grave injury to his life, limb or health (whether mental or physical of a woman), amounts to 'cruelty' and that prima facie case is made out against the petitioner. At that stage, learned counsel for petitioner argued that he does not press this point any further. In any case, this is a question of fact which cannot be decided at this stage.

4. Learned counsel for petitioner next argued that in the FIR itself office address and telephone numbers of the petitioner of Muscut are mentioned. No effort was made by the trial court to serve the petitioner at the address given in the FIR either after challan was filed or during investigations. As the petitioner was in Muscut, summons were never served on him. Order dated 24.9.1996, issuing proclamation under Section 82 Cr. P.C. against the petitioner and the order dated 4.10.1996 declaring him a proclaimed offender are thus not sustainable. There appears to be merit in the contention. Section 82 of the 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.

5. Mere perusal of the Section 82 shows that before a proclamation can be issued, the court should have reasons to believe (whether after taking evidence or not), that a person against whom a warrant was issued has absconded or is concealing himself and that the warrant cannot be executed. It may be subjective satisfaction but it cannot be totally without any material. Only after recording such satisfaction, the Court can direct the publication of a written proclamation requiring such person to appear at a specified place within the period, not less than 30 days from the date of said publication. Sub-clauses (a), (b) and (c) of clause (i) of sub-section (2) of Section 82 provide that the manner in which proclamation should be published, by reading it in some conspicuous place of the town, by affixing it on some conspicuous part of the court house. Sub-clause (2) also provides that if the court thinks fit, the proclamation can be published in some daily newspaper, circulating in the place in which such person ordinarily resides. Lastly, Sub-section (3) of Section 82 states that a statement in writing by the court issuing proclamation to the effect that the proclamation was duly published on the specified day in the specified manner in clause (i) of Sub-section (2) would be deemed to be conclusive evidence that the requirements of Section were complied with.

6. Section 83 provides for attachment of property of the person absconding. The court issuing proclamation under Section 82 Cr.P.C. may, for the reasons recorded in writing, at any time after issuing of proclamation, order attachment of any property moveable or immovable or both of the proclaimed person.

7. In this case on 24.9.1996, investigating officer moved an application before trial court stating that non bailable warrants against the petitioner could not be served

and prayed for initiation of proceedings under Section 82/83 Cr.P.C. against him. The court passed the following order:-

'Present : I.O. ASI Ram Chander

Heard. Report perused. Issue process u/s.82/83 Cr.P.C. against accused for 4-10-1996.'

8. Thereafter on 4.10.1996, investigating officer moved another application that no moveable or immoveable assets of the petitioner were found in India, and on that application trial court passed the following order:

'Present : I.O. ASI Ram Chander

Heard. Report perused. I am satisfied that accused is deliberately evading the proceedings of court and his arrest. Hence, he is declared P.O.'

9. The orders clearly show that while issuing process under Section 82/83 Cr.P.C. the court did not record satisfaction that the warrants against petitioner cannot be served or that he is concealing himself. In fact, no effort was made to serve the petitioner at the address given in the FIR itself. There is nothing to show that summons were ever attempted to be served on the petitioner through Ministry of External Affairs at Muscut. The orders appear to have been passed without any application of mind. Further on 24.9.1996, the next date fixed for appearance of the accused was 4.10.1996 which was against the mandate of law. Section 82 Cr.P.C. requires that the date for appearance of the accused should not be less than 30 days from the date of the publication. The instructions to the criminal courts as contained in Chapter 15 of Part V of Delhi High Court Rules are also to the same effect. The proclamation under Section 82(2) Cr.P.C. in addition to the ordinary mode of service can also be ordered to be published in a newspaper where the person is ordinarily residing. In such like cases, trial court should order the publication in an appropriate newspaper in addition to the other modes as provided under the Section. Thus, the petitioner was declared proclaimed offender in violation of Section 82 Cr.P.C. It is settled law that 'where a power is given to do a certain thing in a certain way, the thing must be done that way or not at all. Other

methods of performance are necessarily forbidden' (Nazir Ahmed Vs . King Emperor

10. For the forgoing reasons, impugned order dated 24.9.1996 issuing proclamation against the petitioner and the order dated 4th October, 1996 declaring the petitioner as proclaimed offender are hereby set aside. Petitioner is directed to appear before the trial court on 18th September, 2001 at 2.00 P.M. for further proceedings in the trial in accordance with law. Any observation made herein, shall not affect the merits of the case.

11. Petition stands disposed of.

12. dusty.

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