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2011 PLRonline 0205

PUNJAB AND HARYANA HIGH COURT

Rakesh Kumar Jain, J.

Rahul Dutta v. State Of Haryana

CRM-M-34328-2011 (O&M)

12.12.2011

CrPC S. 82(1), S. 82(4), S. 174-A – “proclaimed person” and “proclaimed offender” have different connotations - A person who is evading the execution of warrants of arrest issued under the particular Sections of the IPC which are mentioned in Section 82(4) Cr.P.C., can only be declared to be a proclaimed offender and the persons under the other provisions of the IPC and the laws, can be declared to be a proclaimed person in terms of Section 82(1) Cr.P.C.

The offences mentioned in S. 82(4) Cr.P.C. are of recurring nature. All the persons, who are absconding or concealing themselves to evade execution of warrants of arrest, could be proclaimed persons but they could be declared a “proclaimed offender” only under the provisions of the IPC which are mentioned in Section 82(4) Cr.P.C.

There is a difference of punishment provided under Section 174-A IPC as it provides imprisonment which may extend upto three years or with fine or with both regarding a person who has been proclaimed in terms of Section 82(1) Cr.P.C. and the imprisonment which may extend upto seven years and also with fine in respect of a person who is declared a “proclaimed offender” under Section 82(4) Cr.P.C.

Mr. R.S.Cheema, Senior Advocate, with Ms. Tanu Bedi, for the petitioner. Mr. Sagar Deswal, AAG, Haryana. Ms. Madhumeet, with Mr. Rakesh, Advocate, for the complainant.

Rakesh Kumar Jain, J.

The petitioner has prayed for regular bail in a pending trial case registered vide FIR No.127 dated 08.08.2009, under Sections 498-A, 406/34, 174-A of the Indian Penal Code, 1860 [for short “IPC”] at Police Station Sector-40, Gurgaon, District Gurgaon.

The FIR is registered on the complaint of Akansha Bakshi, wife of the petitioner, who has alleged that the petitioner is settled in Australia. She had been to Australia with her parents

and brother before her marriage to verify about the job etc. of the petitioner where she was pressurized to perform paper marriage on 14.06.2008, but her marriage according to Hindu rites was again performed on 14.02.2009. On 28.02.2009, she left for Australia with the petitioner and his brother for more than one month or so. In this interregnum, she was allegedly harassed for demand of dowry. She came back to India for taking her exams on 05.04.2009. Her father gave her Hyundai-i10 car and when she was forced to leave her matrimonial home on 10.05.2009, all her dowry articles/jewellery were retained by her in-laws.

Learned counsel for the petitioner has submitted that the petitioner went to Australia in the year 2000 for doing the course in hospitality management and acquired the Australian citizenship in the year 2005. The matrimonial alliance of the petitioner with the complainant was the result of a family acquaintance. The petitioner came to India in December, 2007 and on 14.01.2008, they were formally engaged in a family function and on 27.05.2008 the complainant along with her parents and brother went to Melbourne and stayed with the petitioner for 21 days. On 29.05.2008, a request was made for registration of marriage before the Australian Court which was accordingly registered on 14.06.2008 and after returning to India, the complainant submitted her visa application to the Australian Embassy along with the statement of her relationship. In terms of the wishes of the complainant's family, the marriage of the petitioner with the complainant was performed as per Hindu rites at Gurgaon on 14.02.2009. On 17.02.2009, the couple went for a Honeymoon to Thailand. They came back to India on 25.02.2009 and left for Melbourne again on 28.02.2009 as the visa of the complainant had already been approved. The complainant came back to India on 04.04.2009 in order to take her exams which were scheduled for 13.05.2009 and on her return, her father gave her a Hyundai-i10 car. She went to her parents' house on 10.05.2009 for taking her exams, but thereafter the present FIR was registered on 08.08.2009 after due deliberations.

It is submitted that the allegations made in the FIR are vague and general in nature, no complaint was ever made in Australia about the alleged harassment for dowry and that the parents of the petitioner are on bail inasmuch father of the petitioner was released on regular bail on 10.08.2009 by the learned Trial Court and his mother has been released on anticipatory bail by this Court on 10.09.2009. He has also submitted that while releasing the mother of the petitioner on anticipatory bail, this Court had observed that all the dowry articles have been returned except for Rs. 1,50,000/- regarding which security/surety was ordered to be furnished. Learned counsel for the petitioner has further submitted that the petitioner was arrested on 31.10.2011 and according to the learned State Counsel, the challan has been presented on 05.12.2011. He has further submitted that the petitioner had applied for regular bail before the learned Trial Court which was dismissed vide its order dated 09.11.2009 on the ground that the petitioner has been declared a proclaimed offender on 12.08.2010 and consequently an offence under Section 174-A IPC is also added in the existing FIR.

It is submitted that not only the entire proceedings declaring the petitioner a proclaimed offender are illegal but also the petitioner cannot be declared a proclaimed offender for the offences under Sections 498-A, 406/34 IPC in view of Section 82(4) of the Code of Criminal

Procedure, 1973 [for short "Cr.P.C."]. He has also relied upon decisions of this Court in this regard in the cases of *Satinder Singh v. The State of U.T., Chandigarh and another*, 2011(2) R.C.R. (Criminal) 89, *Likhma Ram v. State of Punjab and another*, CRM-M-36988-2010 decided on 07.12.2011 and *Sarabjit Rai v. State of Punjab*, CRM-M-37489-2011 decided on 27.01.2011.

He has also submitted that on 14.05.2010, an application was moved by the police for issuance of publication against the petitioner on the ground that he was evading arrest despite issuance of warrants on 28.11.2009 and 14.05.2010.

It was alleged in the said application that the police has verified that the petitioner is the resident of House No.98, Mohyal Colony, Sector-40, Gurgaon and had not visited his house from the last 10-11 months. It is alleged that the learned Trial Court, without applying its mind, issued the proclamation against the petitioner vide its order dated 14.05.2010 for 12.08.2010. As soon as the publication proceedings were carried out and the father of the petitioner came to know that a proclamation notice has been pasted on the outer door of their house, he moved an application on 12.06.2010 before the learned Trial Court for dropping the proclamation proceedings alleging that since the petitioner had not visited India since February, 2009, therefore, there is no question of his evading arrest specially when his Australian address is very well known to the complainant on which he was never tried to be served.

However, vide order dated 12.08.2010, the learned Trial Court declared the petitioner a proclaimed offender. Learned counsel for the petitioner has submitted that there is a total non-application of mind on the part of the learned Trial Court in declaring the petitioner a proclaimed offender as he did not refer to the relevant provisions of law.

In reply, learned counsel for the complainant has submitted that conduct of the petitioner by itself disentitles him to the grant of bail because while entering India through Nepal, he did not mention in his Arrival Card that he is an NRI. He has maintained dual citizenship as his name is still appearing in the ration card No.725638 issued by the Food and Supply Department, Gurgaon. The father of the petitioner had threatened Hari Krishan Khosla, who had joined the inquiry at the time of police verification about the whereabouts of the petitioner for the purpose of his arrest. She has also submitted that in his divorce application filed in Australia, he had given date of separation as 04.05.2009. However, she could not deny that the father of the petitioner was granted regular bail by the learned Trial Court just after a day of his arrest and when the mother of the petitioner was granted anticipatory bail, it was recorded that the entire dowry articles have been recovered except an amount of Rs. 1,50,000/- for which security/surety has been furnished. It is also not denied that the petitioner is in custody from 31.10.2011 and the challan has already been presented on 05.12.2011.

I have heard learned counsel for the parties and perused the available record with their able assistance.

In this case, the most interesting question is as to whether the learned Trial Court could

have declared the petitioner a “proclaimed offender” for the offence under Sections 498-A, 406/34 IPC? In this regard, learned counsel for the petitioner has extensively made reference to various provisions of law.

As a matter of fact, the word “proclaimed offender” is not defined anywhere in the Cr.P.C. In the scheme of the Cr.P.C., the word “proclaimed offender” appears in Section 40(1)(b) wherein every officer employed in connection with the affairs of a village and every person residing in a village are bound to forthwith communicate to the nearest Police Station about the information he may possess respecting a “proclaimed offender”. Section 40(2)(ii) Cr.P.C. deals with the expression “proclaimed offender” which includes a person proclaimed as an offender by any Court in respect of the offence punishable under any of the provisions of the IPC, namely, 302, 304, 382, 392 to 399 (both inclusive), 402, 435, 436, 449, 450 and 457 to 460 (both inclusive). Section 43 Cr.P.C. further provides power to even a private person to arrest a “proclaimed offender”, whereas Section 82 Cr.P.C. also deals with the procedure with regard to proclamation.

Section 82, according to Code of Criminal Procedure, 1973, reads 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 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.”

However, by way of Section 12 of Act No.25 of 2005, sub-sections (4) and (5) were also inserted in Section 82 Cr.P.C. w.e.f. 23.06.2006 vide notification No.S.O.923(E) dated 21.06.2006, which reads as under:

“[(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).]”

Similarly, by way of Section 44 of Act No.25 of 2005, Section 174-A was also inserted in the IPC by which punishment was provided in respect of proclamation of a person and a proclaimed offender. Section 174-A IPC is reproduced as under:

“[174-A Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.- Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 (2 of 1974) shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.]”

Till the amendment by Act No.25 of 2005, proclamation was being done in respect of a person against whom a warrant has been issued and who has been either absconding or concealing himself to evade the execution of warrants but by way of Act No.25 of 2005, in consonance with Section 40(2)(ii), sub-section (4) is made a part of Section 82 Cr.P.C.

The offences mentioned in Section 82(4) Cr.P.C. are of recurring nature. All the persons, who are absconding or concealing themselves to evade execution of warrants of arrest, could be proclaimed persons but they could be declared a “proclaimed offender” only under the provisions of the IPC which are mentioned in Section 82(4) Cr.P.C. There is stark distinction between a proclaimed person and a proclaimed offender and for that reason, there is a difference of punishment provided under Section 174-A IPC as it provides imprisonment which may extend upto three years or with fine or with both regarding a person who has been proclaimed in terms of Section 82(1) Cr.P.C. and the imprisonment which may extend upto seven years and also with fine in respect of a person who is declared a “proclaimed offender” under Section 82(4) Cr.P.C.

I have also minutely examined those sections of IPC mentioned in Section 40(2)(ii) Cr.P.C. and have found that Sections 435, 450 and 457 IPC are not mentioned in Section 82(4) Cr.P.C., whereas Section 364, 367, 400 and 459 IPC are additionally mentioned therein.

Learned counsel for the petitioner has also argued that Sections 83 to 86 Cr.P.C. deal with the proclaimed person and provide a complete procedure with regard to the attachment of his property but it does not deal with a person who has been declared to be a “proclaimed offender”.

Thus, in view of the aforesaid discussion, I am of the considered opinion that the terms

“proclaimed person” and “proclaimed offender” have different connotations. A person who is evading the execution of warrants of arrest issued under the particular Sections of the IPC which are mentioned in Section 82(4) Cr.P.C., can only be declared to be a proclaimed offender and the persons under the other provisions of the IPC and the laws, can be declared to be a proclaimed person in terms of Section 82(1) Cr.P.C.

Thus, keeping in view the facts and circumstances of this case, but without making any observation on the merits, the present petition is hereby allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds to the satisfaction of the learned Trial Court.