



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: May 22, 2026**

+ **CRL.M.C. 6957/2022, CRL.M.A. 26936/2022**

SURAJ

.....Petitioner

Through: Ms. Jyotika Kalra, Mr. Inderdeep Singh and Mr. Vishal Baliyan, Advs.

Versus

STATE OF GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Satish Kumar, APP with Ms. Niketa Manish, Adv. with SI-Satish Kumar, PS: Prashant Vihar

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T (O R A L)

1. By virtue of the present petition under *Section 482* of the Code of Criminal Procedure, 1973 (*Cr.P.C.*), the petitioner seeks the following reliefs:

“1. *Admit this present petition and quash the Impugned Order dated. 21.09.2022 passed by Ld. Sh. Kautuk Vats MM-04(North) Rohini Courts, New Delhi in the Cr. case No. 6755/2017.*

2. *Quash the FIR no. 0564/2022 registered U/s 174A IPC at PS Prashant Vihar registered on 15.10.2022.*

3. *Return of the FDR forfeited vide order dated 30/07/2019.”*

2. At the outset, learned counsel for the petitioner seeks to give up *prayer no.3* and restricts his arguments *qua* *prayer nos.1 & 2* only. Regarding them, the learned counsel drawn attention of this Court to



Statement of Process Server ASI Sanjay, No.8720/DAP, 7th Battalion, Malviya Nagar, Delhi, wherein it is recorded as under:

“On SA

I had received process U/s 82 CrPC against the accused Suraj 5/0 sh. Ramsiya,R/o H. No. 70/1/2, Marbel Market, Mangol Pur Kalan, Delhi. I had gone for execution of process U/s 82,CrPC at the above stated address of accused on 20/10/19. However,' the accused was not found there and the said premises was not completely traceable. The H.No. 70/1/2, which is mentioned above is the Khasra Number. The proclamation of process U/s 82CrPC was publicly read in the said area. A copy of the said process was pasted outside the address given on the process and a copy thereon was also pasted outside the court premises. My report on the process U/s 82 CrPC is Ex. XI, which bears my signatures at point A.”

3. Placing reliance thereon, learned counsel for the petitioner submits that learned Trial Court declared the petitioner as absconder though the statement of the process server itself showed that the address of the petitioner was not traceable. Moreover, he submits that there is neither any photograph nor any proof or affidavit of the process server to show that the process under *Section 82 Cr.P.C.* was executed in accordance with law. The learned counsel, thus, submits that the declaration of the petitioner as absconder was/ is in complete disregard to the guidelines laid down by the Co-ordinate Bench of this Court in *Sunil Tyagi vs. State (NCT of Delhi):(2021) SCC Online Del 3597* and, therefore, the consequential penal liability thereof under *Section 174A IPC* would not be attracted.

4. Thereafter, placing reliance upon the decision of Hon'ble the Supreme Court in *Daljit Singh vs. State of Haryana and Another : 2025*



SCC Online SC 1 learned counsel submits that since an offence under *Section 174A* IPC is an independent offence which may survive notwithstanding the extinguishment of proceedings under *Section 82* Cr.P.C., he seeks indulgence of this Court under its inherent jurisdiction under *Section 482* Cr.P.C. for quashing FIR No.0564/2022 registered at PS Prashant Vihar.

5. *Per contra*, learned APP for State disputes the assertions made by the learned counsel for the petitioner as also the factual position involved.

6. This Court has heard learned counsel for the petitioner as also the learned APP for the State and perused the materials on record.

7. Issuance of process under *Section 82* Cr.P.C. and declaring a person as proclaimed absconder/ offender has serious repercussions as it may lead to deprivation of personal liberty of a person, as also attachment of the properties and in few cases initiation of proceedings under *Section 174A* IPC against such person. Alas, this is one such case. *Section 82(1)* Cr.P.C. provides that publication of proclamation must be preceded by issuance of a warrant and the satisfaction of the Court after there are “*reasons to believe*” that the person against whom the warrant has been issued is absconding or concealing himself so that such warrant cannot be executed. This itself suggests that the Court has to tread with caution and care, less as a routine affair. The “*reasons*” therein connote something more than *prima facie* reflecting that the Court is *convinced* of there being sufficient material(s) on record and substantive to call for issuance of process under *Section 82(1)* Cr.P.C. It is, after all, not a mundane issuance of notice simpliciter.

8. Interestingly, a learned Single Judge of this Court in *Sunil Tyagi*



(*supra*) while dealing with the said issue of issuance of process under Section 82(1) Cr.P.C. laid down certain guidelines, which, for ease of reference, are reproduced as under:-

“Guidelines for issuance of proclamation

442. *Proclamation only on deliberate concealment— The police has to submit a report before the court that the person against whom the warrant was issued, has absconded or is concealing himself.*

443. *Concealment has to be deliberate— The concealment has to be deliberate for the purpose of avoiding arrest. The mere fact that the police could not find the accused, is not enough.*

444. *Mere non-availability at address is not sufficient— Mere non-availability at the address is not sufficient unless the concealment is deliberate to avoid arrest. A person who had gone abroad before the issue of the warrant of arrest cannot be said to be absconding or concealing. However, if the accused left India before proclamation but continues to remain outside India with a view to defeat or delay the execution of the warrant, he shall be taken to be absconding.*

445. *Affidavit/ status report of the police-The police officer shall file an affidavit/status report to disclose the addresses and phone numbers/e-mail addresses (if available) of the accused against whom the warrants had been issued and the reasons for inability to secure the presence of the accused before the court.*

446. *Prerequisites to the issuance of a proclamation-Prior to issuance of a proclamation under Section 82(1)CrPC,*

(i) *The police officer may file an affidavit/status report disclosing:*

(a) *All available addresses and phone numbers/e-mail addresses (if available) of the person against whom the warrant has been issued along with proof of the said addresses, phone numbers/e-mail addresses and any other details available in the information sheet with*



underlying documents demonstrating the same.

(b) Particulars of proof of service of the arrest warrant at the said address; (i) by post; (ii) by hand; (iii) mobile number; (iv) e-mail address (if any); and (v) service on a family member/neighbour along with credible proof of the same.

(c) In the event warrant has been affixed on a conspicuous part of the house where the person ordinarily resides, town/ village/ court house, the police officer must annex a picture showing that warrant has been affixed in such manner along with his affidavit. The picture must be taken in a manner that makes it clear to the court that the warrant has in fact, been affixed at the said house.

(d) Reasons for inability of the police officer in securing presence of the person against whom warrant is issued.

(ii) The court must pass an order dealing with the contents of the affidavit/status report and reasons given by the police officer for arriving at a conclusion that the person has absconded or is concealing' himself or reasons for inability of the officer in securing presence of the person.

447. Court to record satisfaction-Under Section 82CrPC, the court issuing proclamation shall record to its satisfaction that the accused had absconded or concealed himself. The expression "reason to believe" in Section 82CrPC means that the court has to be subjectively satisfied from the materials before it that the person has absconded or has concealed.

448. Court to examine executing officer-Before issuing a proclamation, the court shall examine the officer with respect to the measures taken by him to execute the warrants.

449. Issuance of arrest warrant a precondition-Issuance of an arrest warrant and the accused found absconding, are



preconditions for issuing proclamation.

450. NBW and Section 82CrPC not to be issued together-Simultaneous issuance of both the processes, namely, warrant of arrest and proclamation is ex facie contradictory, since it is only after the former that the latter can be issued where the person concerned has absconded or is hiding.

451. Prerequisites to the publication of a proclamation under Section 82(2)(ii)CrPC-Prior to publication under Section 82(2)(ii)CrPC the police officer may be mandatorily required to file an affidavit disclosing: A picture showing that proclamation has been affixed in a conspicuous place of the house where the person resides. The picture must be taken in a manner that makes it clear to the court that the proclamation has in fact, been affixed at the said house; The court must pass an order dealing with the contents of the affidavit and statement of the process server along with its reasons for directing publication under Section 82(2)(ii).

452. Publication by all three modes essential-Publication by all three modes, namely; (i) public reading in some conspicuous place of the town/village in such person ordinarily resides; (ii) affixation at some conspicuous part of the house or homestead; and (iii) affixation at some conspicuous part of the court house are mandatory under Section 82(2) CrPC. The failure to comply with all the three modes of publication is to be considered invalid publication, according to law as the three sub-clauses (a) to (c) are conjunctive and not disjunctive.

453. Section 82CrPC to be read as a whole-The three clauses (a), (b) and (c) of Section 82(2)(i)CrPC are conjunctive and not disjunctive. The factum of valid publication depends on the satisfaction of each of these clauses. Clause (ii) of sub-Section (2) is optional; it is not an alternative to clause (i). The latter clause is mandatory.

454. Photograph of the affixation of proclamation-Prior to the publication under Section 82(2)(i)CrPC, the police shall file an affidavit along with the photographs of the affixation of proclamation on the conspicuous part of the resident of



the accused. The police officer shall fill and submit performa in the format of Annexure C before the court at the stage of seeking proclamation.

455. Upon publication of the proclamation under Sections 82/ 83CrPC, copy of that newspaper be sent by the newspaper agency by post to the address of the accused as being done in Civil matters under Order 5 Rule 10 CPC.”

9. As per records, in the present case, the learned Trial Court *vide* order dated 30.07.2019, initiated *Section 82 Cr.P.C.* proceeding against the petitioner recording as under:

“NBW against accused received back unexecuted with report that address could not be located. Perusal of record shows that same address is furnished in bail bonds. It seems that accused is deliberately evading the service.

Notice to surety received back with report “incomplete address”. Surety bonds stand forfeited.

Therefore, issue process U/s 82 CrPC against the accused with directions to process server to appear in person for recording his statement qua proceedings U/s 82 CrPC on NDOH.

Issue NBWs against the surety to be executed through SHO concerned, returnable on NDOH.”

10. The aforesaid reveals that it was duly recorded by the learned Trial Court that the NBW against the petitioner had been received back unexecuted with the report that the address could not be located. However, in the same breath the learned Trial Court also proceeded to observe that the petitioner was deliberately evading service. On a bare glance, this Court is unable to find any “reasons” for the learned Trial Court to proceed to do so in terms of *Section 82 Cr.P.C.*, and that too without taking recourse to any/ other alternative mode(s) to serve the petitioner



herein. Mere failure to locate the address of the petitioner cannot, by itself, lead to an inference that the petitioner was intentionally evading the process of law. Moreover, the statement of the Process Server recorded on 21.09.2022 also reveals that the premises of the petitioner was “*not completely traceable*”.

11. All this creates a doubt over the learned Trial Court proceeding to issue process under *Section 82 Cr.P.C.* against the petitioner. More so, since in such a situation, it cannot be conclusively affirmed if the petitioner was aware that he was wanted in the present case. Therefore, the question of his intentionally and deliberately evading the process, does not arise, which is a pre-requisite under *Section 82 Cr. P.C.*

12. In fact, this Court while going through the records before the learned Trial Court finds that there is no document therein showing compliance of mandatory requirements governing execution and publication of process under *Section 82 Cr.P.C.* Also, neither there is any photograph of the affixation nor any affidavit, as mandated by this Court in *Sunil Tyagi (supra)*.

13. In view thereof, this Court is of the considered opinion that the order dated 30.07.2019 initiating *Section 82 Cr.P.C.* proceeding against the petitioner and the consequent impugned order dated 21.09.2022 declaring the petitioner as absconder/ proclaimed offender cannot be sustained. Consequently, FIR No.0564/2022 dated 15.10.2022 registered under Section 174A IPC at PS Prashant Vihar is liable to be quashed.

14. Accordingly, the impugned order dated 21.09.2022 passed by the learned MM-04 (North), Rohini Courts, New Delhi in Criminal Case No.6755/2017 is set aside and FIR No.0564/2022 dated 15.10.2022



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registered under *Section 174A* IPC at PS Prashant Vihar and all consequential proceedings arising therefrom, are hereby quashed.

15. The present petition along with the pending application is disposed of in terms of the aforesaid.

SAURABH BANERJEE, J

MAY 22, 2026/Ab/GA