
(2013) 04 DEL CK 0266
In the Delhi High Court
Case No : Criminal Rev. P. 44 of 2013

Munnawar Hasan

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 82, 82(1)
Penal Code, 1860 (IPC) — Section 174A

Citation : (2014) 2 Crimes 155 : (2014) 1 JCC 430 : (2014) 1 JCC 254

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Sudarshan Rajan and Mr. Mohd. Qamar, for the Appellant; Sunil Sharma, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—In FIR No. 168/2008 State v. Israr etc., petitioner-accused was declared as proclaimed offender on 17th September, 2008

and upon being apprehended on 24th February, 2009, he was charge-sheeted for the offence u/s 174A of IPC. Impugned order of 19th

September, 2012 directing framing of charge u/s 174A of IPC and an additional charge framed on 25th September, 2012 for the aforesaid offence

are assailed in this petition. Learned counsel for petitioner had contended that proceedings u/s 82 of Cr.P.C. stood vitiated as proclamation was

issued on 10th July, 2008 for appearance of petitioner by 31st July, 2008 whereby giving 21 days" time whereas mandatory period is of 30 days".

Petitioner"s counsel had asserted that the mandate of Section 82 of Cr.P.C. stood vitiated as the proclamation was not read aloud in the locality.

According to petitioner"s counsel, no charge u/s 174A of IPC can be framed against petitioner due to violation of mandatory provision of Section

82 of Cr.P.C. and so, impugned order and the charge framed in pursuance to it deserve to be set aside. In support of above submission reliance

was placed by petitioner's counsel upon decisions in Rohit Kumar @ Raju Vs. State of NCT Delhi and BSES Rajdhani Power Ltd., ; Maneesh

Goomer Vs. State, & Sunil Kumar Vs. State and Another, .

2. Learned Additional Public Prosecutor for Respondent-State supported the impugned order and had submitted that failure to read out the

proclamation in the locality does not amount to violation of mandatory provision of Section 82 of Cr.P.C. and is a mere irregularity which stands

cured as the proclamation was pasted outside the house of petitioner-accused and the period of 21 days" given to petitioner-accused to appear

instead of 30 days" is a bona-fide technical error from which petitioner-accused cannot derive any undue benefit as it is not the case of petitioner

that he had appeared before the court within 30 days" of the proclamation. To point out that Section 82(1) of Cr.P.C. is not mandatory but is

directory, reference was made to a decision in K. Rama Krishna v. State of A.P. 2011(1) Crimes 551 (Ker.).

3. After having heard both the sides and on perusal of the impugned order and decisions cited as well as the record of this case, it transpires that

the object and purpose of Section 82 of Cr.P.C. is to secure presence of accused. Failure to read out the proclamation in the locality does not

result in miscarriage of justice as the proclamation was pasted outside the house of petitioner-accused. So, on account of this technical lapse,

initiation of proceedings u/s 174A of IPC cannot be thwarted as at this initial stage, a prima facie case only is to be seen and meticulous

examination is not to be done as the same is required to be done at the final hearing.

4. The pertinent observations made by Andhra Pradesh High Court in K. Rama (supra) are as under:-

Due to failure of giving 30 days time as contemplated u/s 82 Cr.P.C., the petitioner did not suffer any prejudice nor injustice.

5. Aforesaid observations reflect the current judicial trend which appeals to reason and therefore, this Court is not inclined to adopt a hyper

technical view of infringement of Section 82 of Cr.P.C. as adopted in the decisions relied upon by petitioner. Since it is not the case of petitioner

that he wanted to surrender on the 30th day of proclamation, but could not do so because 21 days" time instead of 30 days" time was given,

therefore, prima facie petitioner suffers no prejudice. Suffice it would be to say that though Section 82(1) of Cr.P.C. is of mandatory nature but its

literal compliance would defeat the purpose of this provision and so, prevalent judicial ethos certainly requires that substantial compliance of

mandatory provision, like the instant one, has to be made. Prima facie it appears that the provision of Section 82 of Cr.P.C. stands substantially

complied with. Thus, finding no illegality or infirmity in the impugned order, I dismiss this revision petition while refraining to comment upon the

merits of this case lest it may prejudice petitioner at trial.