

(2016) 08 AHC CK 0172

In the Allahabad High Court

Case No : Application U/s 482 No. 21686 of 2016

Shubham Pandey

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 82(1)
Penal Code, 1860 (IPC) — Section 174A

Citation : (2016) 8 ADJ 730

Hon'ble Judges : Mrs. Vijay Lakshmi, J.

Bench : Single Bench

Advocate : Raghvendra Pratap Rajan, Advocate, for the Applicant; G.A, for the Opposite Party

Final Decision : Allowed

Judgement

Mrs. Vijay Lakshmi, J.—The applicant, by means of this application under Section 482 Cr.P.C., has invoked the inherent jurisdiction of this Court with prayer to quash the charge-sheet dated 11.4.2015 as well as the entire proceedings of Criminal Case No. 1448 of 2015, arising out of Case Crime No. 51 of 2015, under Sections 174(A) I.P.C., P.S. Shivpur, district Varanasi, pending in the court of AC.J.M. VI, Varanasi.

2. In pursuance of the previous order of this court dated 27.7.2016 the record of Criminal Misc. Writ Petition No. 6255 of 2015 has been sent by the office.

3. Heard learned counsel for the applicant and learned AGA. Perused the record.

4. The only ground on which the applicant has challenged the legality and correctness of the impugned charge sheet and the cognizance order, is that without waiting for the mandatory period of thirty days as specified under section 82(1) Cr.P.C. after issuance of proclamation, the FIR under section 174A of I.P.C. has been registered against the applicant on which, the police, without keeping in view the mandate of law, has mechanically submitted charge sheet and the

learned Magistrate without application of mind has taken cognizance.

Section 82(1) Cr.P.C. provides 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.

Section 174-A I.P.C. is also reproduced below:-

Section 174A in The Indian Penal Code

[174A. 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 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.]

5. Now, looking to the facts of the case in hand, in wake of aforesaid legal provisions, it appears that the order issuing proclamation under section 82 Cr.P.C. is dated 20.2.2015. Hence, it is clear that the provisions of section 82(1) Cr.P.C., as quoted above, according to which a time not less than thirty days has to be provided to the applicant to appear at a specified place and at a specified time after issuance of proclamation under section 82 Cr.P.C., have not been complied. The FIR has been registered under section 174A I.P.C. on 27.2.2015 i.e. only after seven days of the order without waiting for the mandatory period of thirty days.

6. More so, in order to attract the criminal liability under this section, an order specifying the place and the date for appearance of the accused is also mandatory. However, there is no such order of the Magistrate specifying the date and the place of appearance of the applicant.

7. Keeping in view the aforesaid facts and circumstances, this application deserves to be allowed.

8. Accordingly, the application is allowed and the charge-sheet dated 11.4.2015 as well as the entire proceedings of Criminal Case No. 1448 of 2015, arising out of Case Crime No. 51 of 2015, under Sections 174(A) I.P.C., P.S. Shiv Pur, district Varanasi, pending in the court of AC.J.M. VI, Varanasi, are hereby quashed.