

[Lahore]

Before Farooq Haider and Muhammad Tariq Nadeem, JJ

MUHAMMAD HUSSAIN---Appellant

Versus

The STATE and others---Respondents

Criminal Appeal No. 69556 of 2024, decided on 6th November, 2024.

Criminal Procedure Code (V of 1898)---

----Ss. 87, 75(2), 369, 435 & 439---Issuance of process (summons, warrants, proclamation)--- Purpose to bring the accused before Trial Court---Order of the Court declaring accused as Proclaimed Offender ("PO declaring order"), assailing of---Remedy---Recalling of PO declaring order---Trial Court, powers of---As the accused did not appear before the Trial Court on date fixed for hearing; Trial court declared him as Proclaimed Offender (PO) carrying out the proceedings under S.87, Cr.P.C against him ('PO declaring order')---Thereafter, the accused, while marking his attendance before Trial Court, filed application for recalling of said 'PO declaring order'---Accused/appellant approached High Court as his application to recall PO declaring order was dismissed by the Trial Court---Trial Court declined re-calling of PO declaring order, primarily, by holding that "... .. Legality and propriety of such an order can be looked into by Hon'ble High Court being revisable under Ss.435 and 439 Cr.P.C. In view of above, application stands dismissed."---Validity---Basic and prime purpose of issuance of process through notice, summons, bailable warrants, non-bailable warrants as well as proclamation was to bring the accused in the court for facing the proceedings of the case in accordance with law---When application for re-calling of order dated 09.10.2024 was filed on behalf of appellant / accused and he (appellant) himself appeared/surrendered before the court then it was appropriate for the court either to take him into custody as his surety bond was already forfeited vide PO declaring order (dated 09.10.2024) or to recall the same (PO declaring order) if reasons were cogent, relevant and plausible for recalling the same, and undoubtedly PO declaring order (dated 09.10.2024) was not a judgment rather an interim order---Furthermore, pertinently, even warrant issued by the Court can be cancelled under S.75(2), Cr.P.C. by the Court which issued it---Application for recalling of order qua issuance of "warrant of arrest" or "proclamation" of accused is neither entertainable/maintainable nor proceedable without surrender of the accused in the Court---High Court, with the concurrence of the parties and for the safe administration of justice set-aside impugned order (dated 14.10.2024) passed by Trial Court and remanded the matter to the Trial Court where the application filed by the appellant / accused for re-calling of (PO declaring order) dated 09.10.2024 would be deemed as pending and if appellant surrendered before Trial Court on 11.11.2024 then said application would be decided through fresh order after hearing all concerned and strictly in accordance with law, however, if appellant did not surrender before Trial Court on 11.11.2024 then his application would not be proceedable---Appeal, filed by accused, was disposed of accordingly.

Mehram Ali Bali for Appellant.

Haroon Rasheed, Deputy Prosecutor General for the State (on Court's call).

ORDER

Through this appeal, Muhammad Hussain (petitioner) has impugned the vires of orders dated: 09.10.2024 as well as 14.10.2024 passed by trial court.

2. Brief however necessary facts for disposal of this appeal are that Muhammad Hussain (present appellant) is facing trial as accused in the case arising out of FIR No.386/2023 dated: 24.02.2023 registered under Section: 9(1) 3 (c) of the Control of Narcotic Substances Act, 1997 at Police Station: Millat Town, Faisalabad before learned Additional Sessions Judge, Faisalabad/trial court; appellant did not appear before the trial court on 09.10.2024, he was declared as proclaimed offender, his surety bond was forfeited and Station House Officer was directed to enter name of the accused in the register of proclaimed offenders; relevant portion of said order is hereby reproduced:-

"Accused has absented himself from the court deliberately. It is pertinent to mention here that it is well in knowledge of the accused that his case is pending adjudication in the court and despite having knowledge he has not appeared in court which shows his irrelevant conduct towards court proceedings. Nor he himself nor on behalf of the accused has brought in knowledge to the court regarding reasons of his absence. His conduct does not entitle any leniency. It is primary duty of the accused to appear before the court on each and every date. Therefore, reliance is place on PLD 1978 SC (sic), today I dispense proclamation under section 87 Cr.P.C and declare him as proclaimed offender. His surety bound is forfeited and separate proceedings are prepared under section 514 Cr.P.C against surety. S.H.O concerned is directed to enter the name of accused in the register of proclamation offender.

Thereafter present appellant filed application for recalling of said order dated 09.10.2024 and marking his attendance before trial court (copy of said application is available at pages No.20-21 of instant appeal) which was dismissed vide order dated 14.10.2024 passed by trial court (copy of said order is available at page No.23 of this appeal) and relevant portion of the same is hereby reproduced:-

"Perusal of record reveals that accused was facing trial before this court in case FIR No.386 dated 24.02.2023 under section 9(i)3C CNSA 1997 registered at Police Station Millat Town, Faisalabad, who absented himself from the court resulting into carrying out the proceedings under section 87 Cr.P.C against him and he was declared proclaimed offender on 09.10.2024. Legality and propriety of such an order can be looked into by Hon'ble High Court being revisable under sections 435 and 439 Cr.P.C. In view of above, application stands dismissed."

3. Learned counsel for the appellant and learned Deputy Prosecutor General (on Court's call) submit in unison that impugned order dated 14.10.2024 is not in accordance with law and it would be appropriate to set-aside the same and refer matter back to the trial court for re-deciding said application through fresh order.

4. After hearing learned counsel for the appellant, learned Deputy Prosecutor General and going through the available record appended with this appeal it has been noticed that vide order dated 09.10.2024 (mentioned above), appellant has been declared proclaimed offender and his surety bond has been forfeited. It is trite law that basic and prime purpose of issuance of process through notice, summons, bailable warrants, non-bailable warrants as well as proclamation is to bring the accused in the court for facing the proceedings of the case in accordance with law. When

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application for re-calling of order dated 09.10.2024 was filed on behalf of appellant and if he (appellant) himself appeared/surrendered before the court then it was appropriate for the court either to take him into custody as his surety bond was already forfeited vide order dated 09.10.2024 or to recall aforementioned order dated 09.10.2024 if reasons were cogent, relevant and plausible for recalling the same and undoubtedly order dated 09.10.2024 is not the judgment rather an interim order; furthermore, it is also relevant to mention here that even warrant issued by the Court can be cancelled by the Court which issued it and Section 75 Cr.P.C. is hereby reproduced for ready reference in this regard:

"75. Form of warrant of arrest. (1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

(2) Continuance of warrant of arrest. Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed."

It goes without saying that application for recalling of order qua issuance of "warrant of arrest" or "proclamation" of accused is neither entertainable/maintainable nor proceedable without surrender of the accused in the Court. Therefore, with the concurrence of learned counsel for the appellant, learned Deputy Prosecutor General and for the safe administration of justice, aforementioned order dated 14.10.2024 passed by trial court is hereby set-aside, matter is remanded to the trial court where aforementioned application filed by the appellant for re-calling of order dated 09.10.2024 will be deemed as pending and if appellant will surrender before trial court on 11.11.2024 then said application would be decided through fresh order after hearing all concerned and strictly in accordance with law. However, if appellant will not surrender before trial court on 11.11.2024 then his application (mentioned above) would be not proceedable (as discussed above) and law will take its own course in furtherance of order dated 09.10.2024 passed by learned Additional Sessions Judge, Faisalabad/trial court. With this observation, this appeal stands disposed of.

MQ/M-3/L

Order accordingly.