

Crl. Misc. No. M-28822 of 2012

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Misc. No. M-28822 of 2012

Date of decision: 16.07.2015

Kamaljit Kaur @ Kawaljit Kaur

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Ms. Shallie Mahajan, Advocate, for
Mr. Sharwan Sehgal, Advocate, for the petitioner.
Mr. K.S. Sidhu, DAG, Punjab.

PARAMJEET SINGH, J.

Instant petition under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 22.03.2011 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Ferozepur, whereby petitioner has been declared as proclaimed offender in a case arising from FIR No.40 dated 12.03.2008 registered under Sections 420/465/467/468/471/120-B IPC at Police Station Ghall Khurd.

Brief facts for the disposal of present case are to the effect that one Kulwant Kaur moved an application against the petitioner and Narinder Kaur alleging that application were invited for some vacant posts of Anganwari Workers. Total six applications were received. After that Narinder Kaur in connivance with petitioner who was working as CDPO, prepared a forged certificate of 10th Class by tempering the

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marks obtained, whereas according to original record complainant Kulwant Kaur was first in the merit list. After enquiry, aforesaid FIR was registered against the petitioner and Narinder Kaur. Thereafter petitioner was released on anticipatory bail by this Court vide order dated 15.07.2008. It is the case of the prosecution that after completion of investigation petitioner was informed that challan was going to be presented against her before the Court but petitioner failed to appear before the Court at the time of presentation of challan on 03.07.2008 and trial Court issued various notices to the petitioner to appear before the Court but petitioner did not appear. Thereafter, to procure her presence bailable warrants were issued against the petitioner, however, in spite of that petitioner again failed to appear before the Court. Vide impugned order dated 22.03.2011 petitioner has been declared proclaimed offender. Hence, this petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner contended that impugned order is not sustainable in the eyes of law. Learned counsel further contends that the petitioner has been wrongly declared as proclaimed offender without following the procedure as laid down under Section 82 of the Code of Criminal Procedure. Petitioner is working in the office of CDPO, Guru Har Sahai, District Fazilka. Petitioner was granted anticipatory bail by this Court vide order dated 15.07.2008 and after that she was never served when proclamation proceedings were initiated against her. Petitioner had been attending her office regularly.

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On the other hand, learned counsel for the State contends that impugned order is just and fair as petitioner was intentionally avoiding service.

I have considered the contentions raised by learned counsel for the parties.

Section 82(1) of the Code of Criminal Procedure 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.”

In ***Jagdev Khan v. Emperor, A.I.R. (35) 1948 Lahore 151***, the

Hon'ble Lahore High Court dealt with the provisions relating to

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proclamation of person absconding, contained under Section 87 of the old Cr.P.C. which reads as under: -

“(1) If any Court has reason to believe.....that any person against whom a warrant has been issued by it has.....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) (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; and

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;”

Provisions of Section 87 of the old Cr.P.C. are akin to Section 82 of Cr.P.C. in vogue.

Perusal of Section 82 Cr.P.C. and law laid down in ***Jagdev Khan's*** case (supra) makes it clear that in case a person is intentionally avoiding the warrants, Court is empowered to 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 and also the manner in which such proclamation shall be published. In order to ensure that an accused should have a fair opportunity to appear, 30 days clear notice is necessary and the proclamation should be published in the manner provided by law. In the instant case, petitioner was granted anticipatory bail in the aforesaid FIR

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and was attending her office regularly. It is apparent on the face of record that no notice in writing was given to the petitioner and procedure for publication of proclamation has also not been followed. Besides that, there is nothing on record to show that provisions of Sub-Section 2(i) of Section 82 Cr.P.C. have been complied with. As per these provisions a notice of proclamation is required to be read publicly in some conspicuous place of the town or village in which such person ordinarily resides. It is also required to 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. A copy of the notice is also required to be affixed to some conspicuous part of the Court-house. Thus, petitioner has been wrongly declared proclaimed offender vide impugned order without following the procedure of law.

In view of above, present petition is allowed. Impugned order dated 22.03.2011 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Ferozepur, whereby petitioner has been declared as proclaimed offender, is quashed.

(Paramjeet Singh)
Judge

July 16, 2015
R.S.