

CrI. Misc. No. M-4100 of 2015

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

CrI. Misc. No. M-4100 of 2015

Date of decision: 05.05.2015

Dilbagh Singh @ Sonu

....Petitioner

Versus

State of Punjab

....Respondent

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: - Mr. Veneet Sharma, Advocate, for the petitioner.
Mr. K.S. Sidhu, DAG, Punjab.

PARAMJEET SINGH, J. (ORAL)

Instant petition under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 25.09.2014 (Annexure P-4) passed by learned Sub Divisional Judicial Magistrate, Ajnala, whereby petitioner has been declared as proclaimed offender in a case arising from FIR No.50 dated 26.03.2014 registered under Sections 365/366/494/506/376/120-B IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Ajnala, Amritsar Rural, District Amritsar.

Brief facts for the disposal of present case are to the effect that in a case arising from the aforesaid FIR, on 16.08.2014 learned SDJM, Ajnala, issued arrest warrants against the petitioner for 20.08.2014. On 20.08.2014 proclamation of the petitioner was issued for 23.08.2014 on the report that he was intentionally avoiding service and case was

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adjourned to 25.09.2014. Vide impugned order dated 25.09.2014 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 proclamation against the petitioner was ordered to be issued for 23.08.2014 vide order dated 20.08.2014 and subsequently vide order dated 25.09.2014, he was declared proclaimed offender. 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.

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 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

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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, proclamation of the petitioner was issued on 20.08.2014 for 23.08.2014 and vide impugned order dated 25.09.2014 petitioner was declared proclaimed offender. It is apparent on the face of record that clear notice of 30 days as mandated under Section 82 Cr.P.C. has not been given to the petitioner and the 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

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impugned order without following the procedure of law.

In view of above, present petition is allowed. Impugned order dated 25.09.2014 (Annexure P-4) passed by learned Sub Divisional Judicial Magistrate, Ajnala, whereby petitioner has been declared as proclaimed offender, is quashed.

(Paramjeet Singh)
Judge

May 05, 2015
R.S.