

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

234

CRM-M-43544-2015

Date of Decision: February 26, 2016

GURVINDER SINGH @ KAPRA

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANR.

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE M.M.S.BEDI

Present: Mr.Mandeep Kumar Dhot, Advocate for the petitioner.

Mr.A.S.Jatana, Addl.A.G.Punjab.

M.M.S.BEDI, J.(Oral)

Petitioner was declared proclaimed offender vide order dated 21.7.2014. The petitioner has challenged the order declaring him proclaimed offender. The Judicial Magistrate Ist Class, Phillaur committed the case to Court of Sessions for 4.8.2014 directing the accused who were present to appear before the Court of Sessions.

So far as the petitioner is concerned proclamation issued qua him and others had been received back executed. A certified copy of the statement of Constable Shamsher Sharma dated 5.7.2014 has been produced on record indicating that on 22.6.2014, he had gone to spot for execution of the proclamation against Gurwinder Singh and a copy of the proclamation had been affixed on the outer door of the house of petitioner; one at a conspicuous place of village of the accused and one copy on the Notice Board of the Court. Neither the particulars are mentioned nor details of conspicuous place of the village is mentioned in the statement dated 5.7.2014 made by Constable Shamsher Sharma. The petitioner was declared proclaimed offender on 21.7.2014. The case had been taken up by Judicial Magistrate Ist Class, Phillaur on 5.7.2014 as is apparent from the certified copy of the order. There is nothing on record indicative of the fact

that the petitioner had been issued any notice for 5.7.2014 or for 21.7.2014.

No notice having been served upon the petitioner for appearing on 21.7.2014, order declaring him proclaimed offender on 21.7.2014 is not sustainable in the eyes of law. The order declaring him proclaimed offender is hereby set aside as he did not have a clear 30 days as per the requirement of the Section 82(4) of the Code of Criminal Procedure.

Petition is partly allowed. Order dated 21.7.2014 qua the petitioner is allowed. It will be open to the petitioner to avail his remedy under Section 438 of the Code of Criminal Procedure irrespective of the order declaring him a proclaimed offender as co-accused of the petitioner have been acquitted and petitioner is ready to face the trial.

February 26, 2016
TSG

(M.M.S.BEDI)
JUDGE