

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

**CRM No.M-137 of 2016 (O&M)
Date of Decision: March 01, 2017**

Harbhajan Singh Heer

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.S.Brar, Advocate
for the petitioner.

Mr.Deep Singh, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.S.S.Hira, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of the order dated 16.12.2013 passed by learned Judicial Magistrate Ist Class, Hoshiarpur, whereby the petitioner has been declared as proclaimed person in case FIR No.20 dated 15.03.2012 under Sections 452, 324, 323, 148 and 149 IPC and all subsequent proceedings arising therefrom. However, learned counsel for the petitioner did not press the prayer qua quashing of order dated 23.09.2015 (Annexure P-14).

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

First of all, I find that Section 82 Cr.P.C. provides as under:-

82. Proclamation of 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 specific 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 home-stead 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.

The statement of PRHC Surinder Pal which was recorded by learned JMIC, Hoshiarpur on 07.11.2013 is as under:-

“I had received the proclamation warrants of accused Harbhjan Ram s/o Gurmeet Ram, r/i Harmua, PS Mehtiana, Hoshiarpur for effecting his service for 07.11.2013. I contacted with Chokidar Bakshi Ram. I raided the above said residences of accused on 16.10.2013 but, he was not found there. I had pasted one copy of each notice on the main gate of above said residence of accused and one copy of notice on the public place. There are no chances of availability of above said accused on the above said address in future so, he may be declared proclaimed offender. I have recorded the statement of PRHC Surinder Pal no.1748. Proclamation is Ex.PA and report is Ex.PB.”

The perusal of this statement shows that proclamation was published on 16.10.2013 and the date for appearance of the accused was 07.11.2013, which means that 30 days' time has not been given to the

accused which is mandatory for the proclamation under Section 82(1) Cr.P.C. It is requirement of the law that in the proclamation, to declare an accused as proclaimed offender or proclaimed person, time and place are to be specified for appearance of the accused and time of at least 30 days is to be given from the date of publication.

In the present case, copy of the publication has also been placed on the record which is Annexure P-7. It is stated that accused is to appear before this Court on 07.11.2013 but no time has been mentioned. Even if it is taken that it is irregularity and not illegality, even then, no order has been passed on 07.11.2013 for declaring the accused as proclaimed person nor any fresh proclamation was issued by learned Magistrate. The summoning order dated 16.12.2013, simply shows that accused has not put in appearance and mandatory period of 30 days has already been expired. There is mention in the order regarding publication of proclamation on 16.10.2013 but there is nothing on the record that accused was asked again to appear before the Court on 16.12.2013. No such publication issued for the appearance of the accused in the Court for 16.12.2013. The publication has not been published as per law and the accused has not been given specific time of 30 days to appear in the Court and the adjournment by the Court to complete 30 days, is not the requirement of law. Rather, in the publication, 30 days' clear time should be given to the accused after publication of the proclamation.

From the record, it is clear that the publication has been effected on 16.10.2013 and the accused was to appear on 07.11.2013 i.e. within less than 30 days and declaring accused as proclaimed offender on

In view of the above discussion, I find merit in the present petition and the same is allowed. The impugned order dated 16.12.2013 passed by learned JMIC, Hoshiarpur and all the subsequent proceedings arising therefrom, are hereby set aside.

March 01, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No