

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

Sr. No.264

CRM-M No.1866 of 2017

Date of decision: 08.03.2017

Avtar Singh

....Petitioner

versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Preetinder S. Ahluwalia, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. Naveen Sharma, Advocate
for respondent No.2.

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DEEPAK SIBAL, J. (Oral)

The present petition had been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short the 'Code'), with a dual prayer for quashing of FIR No.107 dated 19.06.2009, registered under Sections 323, 325, 427, 506, 34 IPC, at Police Station Payal, District Ludhiana, on basis of compromise (Annexure P-5) as also for quashing order dated 03.09.2011 (Annexure P-2) through which the petitioner was declared a proclaimed offender. However, at the time of hearing of the matter, learned counsel for the petitioner restricts his claim, at this stage, only qua the second prayer.

While drawing the attention of the Court to the proclamation

issued, which formed the basis for the passing of the final order declaring the petitioner to be a proclaimed offender, it is submitted that the same is dated 03.05.2011; was made on 13.05.2011 requiring the petitioner to appear before the trial Court on 14.05.2011 and that being so, the same was in violation of the provisions of Section 82(1) of the Code as 30 days clear notice had not been given to the petitioner to appear before the trial Court. In support of his case, reliance is placed on the judgments of this Court in ***Ashok Kumar versus State of Haryana and another, 2013(4) R.C.R. (Criminal) 550 and CRM-M No.42740 of 2016-Satinderpal Aujla @ Satinder Singh versus State of Punjab and another***, decided on 23.01.2017.

The factual aspect of the matter as noticed above is not disputed by the learned State counsel.

In the above background, it requires to be determined whether the proclamation issued in the case of the petitioner leading to the passing of the order dated 03.09.2011 through which the petitioner was declared as a proclaimed offender confirms with the provisions of Section 82(1) of the Code.

Section 82(1) of the Code 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.”

The above quoted provision is clear that through the proclamation made prior to declaration of a person as a proclaimed offender, he should be given not less than thirty days from the date of its proclamation to appear at a specified place and at a specified time.

In the case in hand, thirty days were not given to the petitioner to appear before the trial Court as the proclamation was made on 13.05.2011 requiring him to appear before the trial Court on 14.05.2011. Thus, the proclamation and the subsequent order dated 03.09.2011 (Annexure P-2) declaring the petitioner to be a proclaimed offender do not confirm with the mandate of Section 82(1) of the Code.

The above opinion of mine finds support from the judgment of this Court in ***Ashok Kumar's case (supra)***, wherein it was held as follows:-

“In view of the above provisions of Section 82(1) Cr.P.C., it is clear that the publication was effected on 09.02.2013 and the accused was directed to appear in the Court as per that publication on 06.03.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned order on 13.03.2013, the publication has been effected as per the provisions of Section 82 Cr.P.C. There was no order in the publication for the accused giving specified time and place to appear on 13.03.2013. Therefore, this order is not as per law and the same is set aside”

To the same effect are the observations of this Court in ***Satinderpal Aujla's case (supra)***.

As a result of the afore discussion, the proclamation and the impugned order dated 03.09.2011 (Annexure P-2) are quashed. However, liberty is granted to the trial Court to proceed afresh from the stage of

proclamation and in such process, in the orders to be passed by the trial Court, in accordance with law, the fact of the petitioner having evaded the process for over five years be kept in mind.

(DEEPAK SIBAL)
JUDGE

March 08, 2017

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- (i) Whether speaking/reasoned Yes/No*
- (ii) Whether reportable Yes/No*