

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

CRM No.M-29576 of 2016 (O&M)

Date of Decision: July 21, 2017

Vipin Kumar

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Bedi, Senior Advocate with
Mr.Manpreet Singh, Advocate
for the petitioner.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing the order dated 10.07.2015 passed by learned Judicial Magistrate Ist Class, Rohtak, vide which charge under Section 174-A IPC was framed against the petitioner and judgment dated 04.08.2016 passed by learned Sessions Judge, Rohtak, vide which the revision filed by the petitioner was dismissed.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioner and have gone through the record.

Section 174-A IPC provides as under:-

“174A. Non-appearance in response to a proclamation under

section 82 of Act 2 of 1974.—Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section(1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.”

Section 82 Cr.P.C. provides 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 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.

(3) A statement in writing by the court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in Clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a

declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).”

As per provisions of Section 82 Cr.P.C., three necessary ingredients should be complied with before declaring a person as proclaimed person/proclaimed offender. Firstly, there should be satisfaction of the Court that Court has reason to believe 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. In the present case, on 15.01.2011, following order has been passed:-

“An application for issuance of proclamation warrants of accused V.K.Tyagi has been moved by SHO Hari Singh, which is duly forwarded by learned APP for the State. Warrant of arrest already issued against the accused received back unserved. Now, proclamation warrants under Section 82 Cr.P.C. be issued against accused V.K.Tyagi for 19.02.2011. Executing Constable is also directed to effect the proclamation at least one month prior to the date fixed and to be present in the court on the date fixed for making his statement regarding proclamation.”

The perusal of above order shows that simply on the application moved by the SHO, the Court issued proclamation. Rather, it is clear from this order that warrants have been received back unexecuted. No reasons have been mentioned as to why the warrants have not been executed. There is nothing in the order showing reasons to be believed by the Court as to why the publication should be issued; whether accused has concealed himself, so that warrants could not be executed or he has absconded.

The second ingredient is that Court will publish a written proclamation requiring accused to appear at a specific place and at a specified time not less than thirty days from the date of publishing such proclamation, which means that 30 days period is to be given to the accused

to appear before the Court on specific date and time. In this case, the Court issued proclamation under Section 82 Cr.P.C. on 15.01.2011 for 19.02.2011, which as per record, has been published on 05.02.2011, therefore, 30 days' time and specific date to appear after 30 days was not there in the publication and accused was not given clear 30 days' time to appear before the Court on a specific time. Mere adjournment by the Court to complete 30 days' time, is not strict compliance of the provisions. The accused has no reason to know the date before the Court on which he is to appear. The third ingredient is to publish publication as prescribed under Section 82 Cr.P.C.

In the present case, no satisfaction is there for proclamation nor 30 days' time has been given for appearance of petitioner at specified time and place, therefore, proclamation has not been published as per law. Hence, accused cannot be charged under Section 174-A IPC.

In view of the above discussion, I find that the impugned order dated 10.07.2015 passed by learned JMIC, Rohtak, framing the charge against the petitioner under Section 174-A IPC as well as impugned judgment dated 04.08.2016 passed by learned Sessions Judge, Rohtak, dismissing the revision petition filed by the petitioner, are not as per law and the same are set aside.

Therefore, finding merit in the present petition, the same is allowed. Accused-petitioner stands discharged under Section 174-A IPC.

July 21, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No