

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

**CRM No.M-5928 of 2017 (O&M)
Date of Decision: May 01, 2017**

Abhishek alias Abhishek Sharma

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Mr.V.P.S.Sidhu, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.S.P.S.Sidhu, Advocate
for the complainant.

INDERJIT SINGH, J.

The petitioner has filed this petition under Section 482 Cr.P.C. against respondent State of Punjab for setting aside the impugned order dated 10.11.2016 passed by learned Chief Judicial Magistrate, Ludhiana, whereby the petitioner has been declared proclaimed person in case FIR No.85 dated 26.03.2016 registered at Police Station Focal Point, District Ludhiana etc.

Notice of motion was issued. Learned State counsel as well as learned counsel for the complainant appeared and contested the petition.

Learned counsel for the petitioner argued that the order declaring the petitioner as proclaimed person is not as per law and liable to

be set aside. He argued that learned Magistrate has also not given his satisfaction in the order as to why he is issuing proclamation.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

As per Annexure P-2, which is order dated 06.09.2016 passed by learned CJM, Ludhiana, bailable warrants of accused Abhishek were received back unexecuted with the report that accused was not found at given address and it was ordered that Abhishek be summoned through proclamation for 17.10.2016. There is nothing in the order that accused was avoiding service intentionally or had absconded or concealed himself so that such warrants could not be executed.

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 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.

(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.

Further, the order passed by the Court shows that proclamation was effected on 25.09.2016 and the next date was 17.10.2016. Therefore, mandatory period of 30 days has not been clearly given in the publication from the date of publication of the proclamation for appearance of the accused before the Court. The adjournment by the Court to complete 30 days' period is not as per law. How the accused would come to know that he is to appear on the next date before the Court.

Furthermore, the perusal of the record nowhere shows that petitioner was ever served or has knowledge regarding the proceedings. There being nothing on the record to show that he has absented or has concealed himself, so that warrants cannot be executed. Therefore, in view of the above, I find that mandatory period of 30 days has not been given to the accused to appear on specific time and place after the publication of the proclamation. The proclamation placed on record shows that the accused was asked to appear on 17.10.2016 in the proclamation. There is nothing on the record to show that the petitioner was asked to appear on 10.11.2016 when he was declared proclaimed person.

Keeping in view the above facts, I find that the impugned order dated 10.11.2016 passed by learned CJM, Ludhiana, is not as per law and the same is set aside.

Therefore, finding merit in the present petition, the same is allowed.

May 01, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No