

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

CWP No. 20906 of 2017

Date of decision : 14.09.2017

Anil Kumar

...Petitioner

V/s

State of Punjab & ors.

...Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. S.K. Verma, Advocate for the petitioner.

RAJAN GUPTA J.

Petitioner has prayed for a writ in the nature of certiorari for quashing of order passed by SDJM, Kharar vide which petitioner has been declared a proclaimed offender in a criminal case registered against him under sections 379/420/467/468 & 471, 120-B IPC at police station Sadar Kharar. It has been urged before the court that action of the authorities is in violation of section 82(4) Cr.P.C. He has placed reliance on judgment of this court reported as *Satinder Singh vs. The State of U.T. Chandigarh & anr. 2011(2) RCR (Criminal) 89.*

It appears that petitioner is an accused in a case under sections 379/420/467/468 & 471, 120-B IPC. Despite the process issued by the court, petitioner failed to appear before the SDJM, Kharar. It appears that proceedings under section 82 Cr.P.C. were, thus, initiated. Instead of cooperating with the investigation/trial, petitioner has questioned their jurisdiction to proceed against him. I find plea of the petitioner untenable. In *Satinder Singh's* case (supra), petitioner was directed to surrender before the Magistrate who was directed to proceed as per law.

The plea that a person cannot be declared a proclaimed offender

Cr.P.C. is without any substance. A careful reading of the provision shows that it does not specifically exclude operation of section 82 Cr.P.C. in respect of other offences. Section 82 reads as under:-

“82. Proclamation for person absconding- (1) If any Court has reasons 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.

(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 (45 of 1860), 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). ”

Merely because certain sections of the IPC find mention in section 82(4) Cr.PC. does not impliedly mean that other sections are excluded. On the other hand a conjoint reading of section 82(4) Cr.P.C. and section 174-A IPC shows that in respect of specific offences mentioned therein, a separate FIR can be registered under section 174-A IPC. By legislative omission the provision does not contain clarity. It, thus, cannot be misinterpreted by an accused in criminal case to escape the rigors of section 82 Cr.P.C. and claim that proceedings for declaring them proclaimed offender cannot be initiated. Besides a perusal of aforesaid section shows that amendment introduced in Section 82(4) is supplemental and not in derogation of sub section 1 of section 82. If a provision adds something to an existing provision, it cannot be interpreted to mean that the main provision is rendered otiose. Sub section (4) of Section 82 does not lay down that in offences other than those specified therein, there would be a bar to declare an accused a proclaimed offender. Judgment in Satinder Singh's case (*supra*) is not applicable to facts of this case.

Petition is, thus, without any merit is hereby dismissed.

A copy of this order be circulated to all District and Sessions Judges in States of Punjab, Haryana and U.T. Chandigarh.

September 14, 2017

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No