

(126) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.10113 of 2018
Date of decision : 09.03.2018

Krishan

.... Petitioner

Versus

State of Haryana

.... Respondent

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Bhupender Singh, Advocate for the petitioner.
Mr. Satish Saini, DAG, Haryana.

B.S. Walia, J. (Oral),

[1] Although petition under Section 482 of the CrPC is for quashing of FIR No.206 dated 13.05.2015 under Sections 188, 379 of IPC, 21/4 Mines Act, 1952 registered at Police Station Gharaunda, District Karnal (Annexure P/1) as also order dated 15.01.2018 passed by the learned Judicial Magistrate Ist Class, Karnal (Annexure P2) declaring the petitioner as Proclaimed Offender, yet at the time of hearing, learned counsel for the petitioner states that he does not press the prayer for quashing of FIR at this stage and restricts his claim to the prayer for quashing of order dated 15.01.2018 (Annexure P2) declaring the petitioner as Proclaimed Offender.

[2] Learned counsel for the petitioner contends that as per the mandate of Section 82 of the CrPC clear notice of 30 days is must from the date of publication to date of appearance of the accused before the accused can be declared as a Proclaimed Offender. Learned counsel further contends that vide order dated 25.10.2017 proclamation under Section 82 CrPC was issued

against the petitioner for 14.12.2017 and the same was effected on him on 11.12.2017 and in the circumstances on 14.12.2017, the case was adjourned to 15.01.2018 on which date the petitioner was declared a Proclaimed Offender. Learned counsel contends that as per publication effected on 11.12.2017, petitioner had been directed to appear in Court on 14.12.2017 which period was less than 30 days. Besides, there was no order in the publication for the accused giving specified time and place to appear on 15.01.2018. Learned counsel contends that the impugned order dated 15.01.2018 (Annexure P-2) is legally unsustainable being contrary to the mandate of Section 82 (1) of the CrPC.

[3] Notice of motion.

[4] Mr. Satish Saini, learned Deputy Advocate General, Haryana accepted notice in the pre-lunch session and sought time to go over the paper-book.

[5] In the post-lunch session, learned State Counsel very fairly stated that in view of the factual position, the mandate of Section 82 (1) of the CrPC had been flouted and that in the light of the factual position asserted by the petitioner in the petition, the matter was squarely covered by the decision of this Court in Ashok Kumar v. State of Haryana and another CRM-M No.13638 of 2013 decided on 05.08.2013.

[6] Even otherwise, as per the decision of this Court passed on 05.08.2013 in CRM No.M-13638 of 2013 in case titled as Ashok Kumar v. State of Haryana and another where while taking note of the fact that the publication was effected on 09.02.2013 for 06.03.2013 thereby accused was not given the mandatory period of thirty days to appear before the Court and despite the case having been adjourned on 06.03.2013 for 13.03.2013 on which

date thirty days from date of publication had expired, this Court was pleased to hold that after the publication of the notice on 09.02.2013, accused was not given the mandatory period of thirty days to appear before the Court and the mere fact that the Court had adjourned it after the period of thirty days would not be treated as compliance of Section 82 (1) of the CrPC as there was no order in the publication for the accused giving specified time and place to appear on 13.03.2013. Accordingly the impugned order in the said case was held to be contrary to law and was accordingly set aside.

[8] Relevant extract of aforesaid decision is reproduced as under:-

“As per order dated 4.1.2013 passed by the learned Additional Chief Judicial Magistrate, Panipat, the case has been adjourned for 6.3.2013 for issuing of proclamation under Sections 82 and 83 Cr.P.C. against petitioner Ashok Kumar. The order dated 6.3.2013 shows that proclamation issued against Ashok Kumar received back duly executed. Statement of serving Constable was also recorded. Period of 30 days had not elapsed from the date of publication. Therefore, the case was adjourned to 13.3.2013. On that day, the petitioner was declared as proclaimed offender. The original record also shows that the statement of the serving official, namely, ASI Dilbag Singh was recorded on 6.3.2013, who stated that on 9.2.2013, he visited the place of residence of the accused along with proclamation. After reading publicly, the proclamation was affixed at conspicuous part of the house of the accused where he ordinarily resides. A copy of the proclamation was also

affixed at conspicuous part of the Court house, which means that the publication was effected on 9.2.2013 for 6.3.2013, which shows that after the publication of the notice, the accused was not given the mandatory period of 30 days to appear before the Court. The mere fact that the Court adjourned it after the period of 30 days will not be treated as compliance of the provisions of Section 82 (1) Cr.P.C. where it is provided that:-

“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.

(1) xx xx xx xx

(2) xx xx xx xx”

In view of the above provisions of Section 82(1) Cr.P.C., it is clear that the publication was effected on 9.2.2013 and the accused was directed to appear in the Court as per that publication on 6.3.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned order on 13.3.2013, 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 13.3.2013. Therefore, this order is not as per law and the same is set aside.

Finding merit in the petition, the same is allowed. The impugned order dated 13.3.2012 (Annexure-P.1) is set aside. The lower Court record be returned.”

[9] Learned counsel for the petitioner, however, states that non-appearance of the petitioner was due to circumstances beyond his control and that the petitioner has no intention of misusing the process of law and would therefore put in appearance before the learned trial Court within two weeks from today.

[10] In view of the position as noted above, the impugned order dated 15.01.2018 (Annexure P2) declaring the petitioner as Proclaimed Offender is quashed. The petitioner would put in appearance before the learned trial Court within two weeks from today whereupon the learned trial Court would proceed in accordance with law.

[11] Accordingly, CrI. Misc. petition is allowed as above.

(B.S. Walia)
Judge

09.03.2018
Amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No