

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

CRM-M-34820-2018 (O&M)

Date of Decision:-13.12.2018

Jaibir

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Y.P.Singla, Advocate for the petitioner.

Mr. Arjun Singh Yadav, AAG, Haryana.

Mr. Kunal Muthneja, Advocate for respondent No. 2.

GURVINDER SINGH GILL, J.(Oral)

By way of filing this petition, the petitioners seek quashing of FIR No. 570 dated 23.10.2017 registered under Section 174-A of Indian Penal Code, 1860 at Police Station Kotwali, District Faridabad.

The petitioner against whom complaint under Section 138 of Negotiable Instruments Act, 1881 had been filed by respondent No.2 did not appear pursuant to issuance of summons. Even warrants of arrest remained unexecuted. He was consequently declared a proclaimed offender vide order dated 7.10.2017 and resultantly, the present FIR came to be lodged

It will be apposite to refer to order dated 19.9.2017 passed by learned JMIC, Faridabad i.e. the order passed prior to declaration of the petitioner as proclaimed offender. The said order reads as follows :-

“Non bailable warrant issued against the accused received back unexecuted with the report that accused is willfully avoiding the execution of non bailable warrant. Hence, this court is satisfied that the presence of accused can not be

secured without issuance of proclamation u/s 82 and 83. Let proclamation u/s 82 and 83 Cr.P.C. against the accused be issued for 10.11.2017.

Executing constable is directed to execute the proclamation on or before 07.10.2017. He is also directed to appear before the court on the said date for making his statement.”

A perusal of the aforesaid order reveals that although proclamation was directed to be issued against the accused for 10.11.2017, but it was directed that proclamation be effected on or before 7.10.2017. However, it appears that on the very next day i.e. on 7.10.2017, the trial Court proceeded to declare the petitioner as proclaimed offender although proclamation had been ordered to be issued for 10.11.2017 and in fact as on 7.10.2017, a period of 30 days had also not elapsed from the date when the trial Court had ordered for issuance of proclamation. The order dated 7.10.2017 reads as follows :-

“Today the case was fixed for presence of accused Jaibir.

Mandatory period of 30 days from the date of issuance of proclamation against him has expired but accused has not appeared before this court. Case called since morning. But none has appeared on behalf of accused. It is already 2.30 P.M. No further wait is justified. Hence, accused Jaibir is hereby declared as proclaimed person.

Now, notice to SHO P.S. Kotwali, Faridabad be also issued for 10.11.2017 with the direction to register a case against proclaimed person Jaibir R/o 116/A, Amraudive Enclave, Pinjore, Distt Panchkula, Haryana u/s 174-A I.P.C.”

Section 82 (1) Cr.P.C. which prescribes a period of 30 days between the issue of proclamation and the date on which the accused is

directed to appear in the Court reads as follows :-

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.”**

This Court in Ashok Kumar Vs. State of Haryana 2013(4) R.C.R. (Criminal) 550 while interpreting the provisions of Section 82(1) has held that a clear period of 30 days is required to be furnished to the accused and that even in case the Court subsequently adjourned the matter such adjournment beyond 30 days cannot be treated as compliance of provisions of Section 82(1) Cr.P.C. The relevant extract from the cited judgment reads as follows:

“4. 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.”

In the present case, while proclamation was ordered to be issued on 19.9.2017, the trial Court proceeded to declare the petitioner as proclaimed offender on 7.10.2017 i.e. even before a period of 30 days had elapsed.

In view of the said violation, the impugned order cannot sustain and deserves to be set aside. Consequently, the petition is hereby accepted and the impugned order dated 7.10.2017 (Annexure P-4) is set aside and the FIR in question, which is based on the said order, is hereby quashed.

The petition, thus, stands accepted.

13.12.2018

kamal

(Gurvinder Singh Gill)
Judge

Whether reasoned/speaking

Yes / No

Whether reportable

Yes / No