

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35194-2018 (O&M)

Date of Decision:- 10.12.2018

Lakhvir Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Sandeep Arora, Advocate, for the petitioner.

Mr. A.S.Sandhu, Addl. A.G. Punjab.

GURVINDER SINGH GILL, J. (Oral)

CRM-43788-2018

In view of the reasons mentioned in the application, the same is allowed and Annexures P-6 and P-7 are taken on record subject to all just exceptions.

CRM-M-35194-2018 (O&M)

By way of filing this petition, the petitioner assails order dated 21.7.2016 (Annexure P-4) vide which the petitioner was declared a proclaimed person.

I have heard the learned counsel for the petitioner and also the learned State counsel.

The petitioner was ordered to be summoned vide order dated 4.5.2015 in a complaint filed against him by Kulwant Kaur in respect of offences punishable under Section 323, 325, 504 and 506 IPC. Learned counsel for the petitioner while assailing the impugned order has submitted that in fact the requisite provisions of Section 82(1) Cr.P.C. have not been complied with in letter and spirit inasmuch as a clear period of 30 days as mandated by the provisions of Section 82(1) Cr.P.C. has not been afforded to the petitioner. Learned counsel in this context has referred to the statement of the serving official, annexed as Annexure P-7 from where it is apparent that it was on 4.3.2016 that the publication was effected whereas a perusal of the proclamation notice shows that petitioner-Lakhvir Singh had been directed to appear before the Court on 22.3.2016. In other words, the period between the publication of notice and the date on which the accused was required to appear is less than 30 days. Section 82(1) Cr.P.C. 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, although, the order declaring the petitioner as a proclaimed person was passed much after 30 days as the matter had been adjourned but such adjournment would not cure the defect on account of short fall in period of 30 days between publication and the date fixed for appearance of accused, as per proclamation notice.

In view of the aforesaid position, the impugned order declaring the petitioner as a proclaimed person cannot sustain. Consequently, impugned order dated 21.7.2016, passed by learned Judicial Magistrate 1st Class, Rupnagar, is hereby set aside.

The petitioner is directed to appear before the learned trial Court within a week from today and move an application seeking grant of bail. In case, the petitioner appears before the learned trial Court within one week from today and moves an application for grant of bail, the trial Court shall dispose of the same expeditiously, preferably on the same day itself.

The petition stands disposed of accordingly.

December 10, 2018
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(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No