

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32467-2018(O&M)

Date of Order:09.09.2019

Vikas Jain

..Petitioner

Versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Himanshu Yadav, Advocate, for the petitioner.
Mr. Manish Bansal, DAG, Haryana
Mr. Baljeet Beniwal, Advocate, for respondent no.2.

ANIL KSHETARPAL, J(Oral)

Prayer in this petition is for quashing of FIR No.14, dated 08.01.2018, registered under Section 174-A of the Indian Penal Code, at Police Station Suraj Kund, District Faridabad and all consequential proceedings arising therefrom.

Case under Section 174-A of the Indian Penal Code is registered, if accused does not appear in response to proclamation issued under Section 82 of the Code of Criminal Procedure. Section 174-A of IPC is extracted as under:-

174A. Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.—Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven

years and shall also be liable to fine.

Learned counsel for the petitioner submits that the publication of proclamation itself ordered by the Court is erroneous because no warrants were issued against the petitioner as provided under Section 82 of the Code of Criminal Procedure, which is *sine-qua non* before issuance of publication of a written proclamation. He has drawn attention of the Court to order dated 18.09.2017 passed by the Judicial Magistrate, where the Court noticed that the notice issued to the accused has been received back served, however, accused is not present. The Court straightway ordered publication of proclamation for 26.10.2017. The proclamation which was published was not for a period of 30 days or more as required under Section 82 Cr.P.C. The Court adjourned the case to 10.11.2017.

There are two fundamental errors in the order passed, Annexure P-4, the basis of FIR. Firstly, no warrants were issued against the petitioner and secondly publication of proclamation was for a period less than 30 days. The Judicial Magistrate even after noticing the defect in publication, tried to cure the same by adjourning the case. Such course is not permissible. The publication of proclamation as required under Section 82 Cr.P.C cannot be less than 30 days. The court was required to get published a fresh written proclamation. Still further, the petitioner has already appeared before the trial Court and released on bail.

In view thereof, the order Annexure P-4 and the consequential FIR shall stand quashed.

September 09, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No