

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

CRM-M-51451-2018 (O&M)

Date of Decision:-13.02.2019

Gurdev Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Parshotam Lal Singla, Advocate
for the petitioner.

GURVINDER SINGH GILL, J. (Oral)

CRM-5297-2019

In view of the reasons mentioned in the application, the same is allowed and the documents annexed with the application i.e. Annexures P-15 to P-20 are taken on record, subject to all just exceptions.

Main Case

1. At the very outset learned counsel for the petitioner submits that he is not pressing his prayer at this stage qua quashing of the FIR on merits as the

matter has been compromised and seeks liberty to file another petition for quashing of the FIR on the basis of compromise.

2. In view of the aforesaid submission, the prayer for quashing of the FIR is dismissed being not pressed at this stage with liberty aforesaid.
3. As regards the prayer for setting aside order dated 17.03.2017 (Annexure P-9) vide which he had been declared proclaimed offender, a perusal of the zimni order dated 5.12.2016 (Annexure P-16) shows that it was on 5.12.2016 that the trial Court ordered for issuance of proclamation against the accused Gurdev Singh (petitioner) for 22.12.2016. The proclamation notice (Annexure P-17) was issued on 12.12.2016 requiring the petitioner to appear on 22.12.2016.
4. A perusal of statement of Head Constable Manoj Kumar recorded on 17.03.2017 (Annexure P-18) shows that he has specifically stated that the proclamation was effected on 15.12.2016. The afroesaid facts indicate that while the proclamation was effected on 15.12.2016, the proclamation notice required the petitioner to appear on 22.12.2016 i.e. within a period of about 1 week. Section 82 Cr.P.C. mandates that by way of such notice a period of 30 days is to be afforded to the accused to cause appearance. The same not having been done, the mandatory provisions of Section 82 Cr.P.C. have not been complied with. This Court in Ashok Kumar Versus State of Haryana and another, 2013(4) R.C.R. (Criminal) 550, in identical circumstances, had quashed an order whereby an accused had been declared proclaimed offender mainly on the ground that a clear period of 30 days had not been provided for appearance after publication of notice. In view of the aforesaid violation of mandatory provision of Section 82

Cr.P.C., the order dated 17.03.2017 (Anneuxre P-9) declaring the petitioner as proclaimed offender cannot sustain and the same is hereby set aside.

5. The petition stands accepted accordingly qua setting aside of order dated 17.03.2017.

13.02.2019
Gaurav Sorot

(GURVINDER SINGH GILL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No