

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-64796-2018 (O&M)

Date of Decision:-18.12.2019

Shokat Ali

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Kamal Chaudhary, Advocate for the petitioner.

Mr. Brijesh Sharma, AAG, Haryana.

None for respondent No.2.

GURVINDER SINGH GILL, J.(Oral)

CRM-39952-2019

In view of the reasons mentioned in the application, the same is allowed and copies of proclamation notice, reply of serving official, statement of serving official and order of learned Sub Divisional Judicial Magistrate, Kalka are taken on record as Annexures P-8, P-9, P-10 and P-11, respectively, subject to all just exceptions.

CRM-M-64796-2018

1. The petitioner has approached this Court seeking quashing of FIR No.199 dated 23.7.2018 registered at Police Station Pinjore City, District Panchkula under Section 174-A of Indian Penal Code on the ground that the matter has

since been compromised amongst the parties as well as for setting aside of order dated 4.7.2018 passed by learned Sub Divisional Judicial Magistrate, Kalka (Annexure P-2) vide which the petitioner was declared a proclaimed offender.

2. A few facts necessary to notice for disposal of this petition are that respondent No.2 had instituted a complaint under Sections 323, 406, 420, 452, 498-A, 506 and 120-B of Indian Penal Code, wherein the petitioner was summoned to face trial as an accused. However, on account of non-appearance of the petitioner, proceedings under Section 82 Cr.P.C. were initiated and ultimately he was declared a proclaimed offender vide order dated 4.7.2018 (Annexure P-2). Consequently, FIR No.199 dated 23.7.2018 at Police Station Pinjore City, District Panchkula under Section 174-A of Indian Penal Code (Annexure P-3) came to be lodged.
3. The learned counsel for the petitioner has submitted that the Trial Court did not follow the procedure prescribed under Section 82 Cr.P.C. in letter and spirit and that the petitioner was not afforded the requisite period of 30 days for causing his appearance after publication of proclamation notice.
4. I have heard the learned counsel for the petitioner.
5. A perusal of proclamation notice dated 18.4.2018 (Annexure P-8) shows that the Trial Court, while issuing proclamation notice, directed the accused to cause appearance on 1.6.2018. A perusal of report of serving official (Annexure P-9) and the statement of serving official namely Constable Madan Lal (Annexure P-10) reveals that it was just on 31.5.2018 that proclamation was effected. In other words, it was just one day before the nominated date for appearance that the proclamation was effected.

Subsequently, the matter was adjourned by the Trial Court and it was ultimately on 4.7.2018 (Annexure P-2) that the petitioner was declared a proclaimed offender. A perusal of Section 82 Cr.P.C. would show that it is mandated that a clear period of 30 days is required to be afforded to the accused to cause appearance after publication is effected. Section 82 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.
2. The proclamation shall be published as follows
 - (i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;
 - (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;
 - (c) a copy thereof shall be affixed to some conspicuous part of the Court- house;
 - (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides
3. A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub- section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.”

6. In the present case while publication was effected on 31.5.2018, the accused was required to appear on 1.6.2018. 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.”

7. In view of the aforestated factual position, wherein a period of only 1 day was afforded for causing appearance after the proclamation was effected and in light of ratio of Ashok Kumar's case (supra), the petition is accepted and the impugned order dated 4.7.2018 passed by learned Sub Divisional Judicial Magistrate, Kalka (Annexure P-2) is hereby set aside and resultantly FIR No.199 dated 23.7.2018 registered at Police Station Pinjore City, District Panchkula under Section 174-A of Indian Penal Code is quashed.
8. The petition stands accepted in above mentioned terms.

18.12.2019

pankaj

Whether speaking /reasoned

Whether Reportable

Yes / No

Yes / No

(Gurvinder Singh Gill)
Judge