

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(225)

CRM-M-15813-2020

Date of Decision: August 11, 2020

Ajay Kumar

.. Petitioner

Versus

State of Punjab

.. Respondent

(Through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Chandan Singh Rana, Advocate, for the petitioner.

Ms. Bhavna Gupta, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

CRM-13897-2020

Application is allowed, as prayed for.

CRM-M-15813-2020

Present petition has been filed for quashing of the order dated 09.08.2019 (Annexure P-8) passed by learned Judicial Magistrate Ist Class, Ludhiana by which, the petitioner was declared as proclaimed offender in FIR No.231 dated 28.06.2018, under Section 302, 120-B IPC and Section 25 and 27 of the Arms Act registered at Police Station Jodhewal, District Ludhiana.

Learned counsel for the petitioner states that the petitioner was declared proclaimed offender without going through the actual procedure required under law for undertaking the said proceedings. Learned counsel for the petitioner further submits that under Section 82 Cr.P.C, 30 days period has been stipulated before an accused is to be declared a proclaimed offender and in the present case, the petitioner was declared proclaimed

offender before the expiry of the said period and therefore, the order declaring the petitioner as proclaimed offender dated 09.08.2019 is contrary to the Section 82 Cr.P.C and hence it is liable to be set aside.

Notice of motion was issued. The respondent-State has filed the reply. In the reply, the State has admitted the fact that the order dated 09.08.2019 declaring the petitioner proclaimed offender, was passed ignoring the Section 82 Cr.P.C as 30 days period was yet to elapse. The relevant paragraph of the reply is as under:-

“1. That in the present petition, the petitioner has prayed for quashing of order dated 09.08.2019 Annexure P-8 passed by the Ld. Magistrate whereby the petitioner has been declared a Proclaimed Offender in case FIR No.231 dated 28.06.2018, u/s 302, 120-B IPC and 25/27 of Arms Act, P.S. Jodhewal, Ludhiana. In this regard, it is respectfully submitted that vide order dated 15.07.2019, the Court of Sh. Jasbeer Singh, Ld. Judicial Magistrate, 1st Class, Ludhiana ordered to issue proclamation against the petitioner and the proclamation was duly effected and the statement of the Process Server who effected the proclamation, was recorded by the Ld. Court on 29.07.2019 and thereafter the petitioner was declared Proclaimed Offender by the Ld. Court vide order dated 09.08.2019 Annexure P-8. It is submitted that after effecting the proclamation on 29.07.2019, the statutory period of 30 days was required before declaring the petitioner a Proclaimed Offender which comes on 27.08.2019 but the said Court declared the petitioner a Proclaimed Offender before elapse of the statutory period of 30 days which comes on 27.08.2019 but the said Court declared the petitioner Proclaimed Offender on 09.08.2019. Hence, any appropriate order which this Hon'ble Court may deem proper may kindly be passed.”

As per Section 82(1) of Cr.P.C., before an accused is declared as proclaimed offender, 30 days time period has been provided requiring the accused to appear, after which only, the proclamation can be issued. The relevant Section 82(1) of Cr.P.C. is as under: -

“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.”

Admittedly, in the present case, the statement of the process server, who effected the proclamation requiring the accused to appear within a period of 30 days was issued on 29.07.2019, but the petitioner was declared as proclaimed offender on 09.08.2019 i.e. within a period of 10 days of the said notice. Learned State counsel very fairly conceded that the order dated 09.08.2019 passed by the learned JMIC, Ludhiana is contrary to the statutory provisions.

Keeping in view the above, order dated 09.08.2019 (Annexure P-8) declaring the petitioner proclaimed offender, cannot be sustained in the eyes of law.

The petition is allowed. The order dated 09.08.2019 (Annexure P-8) is set aside.

(HARSIMRAN SINGH SETHI)
JUDGE

August 11, 2020
harsha/naresh.k

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No