

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

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CRM-M-19556-2020 (O&M)
Date of decision: 17.08.2020

Vinay @ Killer

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Raman Chawla, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG Haryana
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

CRM-19517-2020

Prayer in the application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') is for placing on record copy of FIR No.27 dated 05.02.2020 registered under Section 174A of the Indian Penal Code, 1860 (for short 'the IPC') at Police Station Loharu, District Bhiwani as Annexure P-8.

For the reasons mentioned in the application, the same is allowed and copy of FIR No.27 dated 05.02.2020 registered under Section 174A of the IPC at Police Station Loharu, District Bhiwani is taken on record as Annexure P-8.

CRM-M-19556-2020

The petitioner has filed present petition under Section 482 of the Cr.P.C. for quashing of order dated 22.10.2019 passed by learned Sub Divisional Judicial Magistrate, Loharu in case FIR No.12 dated 20.01.2019 registered under Sections 379-B, 506, 365 and 325 of the

IPC at Police Station Loharu, whereby the petitioner was declared proclaimed person under Section 82 of the Cr.P.C., and subsequent proceedings arising out of the same.

Briefly stated the facts giving rise to the filing of the present petition are that on 20.01.2019 complainant-Sandeep made statement to Dharambir Singh, ASI alleging that on 19.01.2019 he was going to his relation at village Farat and at about 7 p.m. while he was smoking by parking his motorcycle near the shop of scrap dealer opposite to bus stand Loharu, six persons including Vinay @ Killer (petitioner) and Mandeep came in Mahendra TUV 300 and forced him to sit in the above-said vehicle and gave beating to him causing injuries on various parts of his body due to which he became unconscious. When he regained consciousness, he found himself near to the Railway Station, Loharu and also found that amount of Rs.50,000/-and one silver chain and two gold rings, which he was wearing, were missing. On telephonic call made to his brother Attar Singh, his mother and brother Anil came on tractor and took him to GH Loharu.

As warrant of arrest issued against the petitioner remained unexecuted, on application of the Investigating Officer proclamation was issued against the petitioner and vide order dated 22.10.2019 the petitioner was declared proclaimed person and on the basis thereof FIR No.27 dated 05.02.2020 was registered under Section 174-A of the IPC at police Station Loharu against him.

Feeling aggrieved from the above-said order and the subsequent proceedings arising out of the same, the petitioner has filed present petition for quashing thereof.

Learned State Counsel has opposed the petition in terms of reply filed by way of affidavit of Gajender Singh, HPS, Deputy Superintendent of Police, Loharu, District Bhiwani on behalf of the respondent-State.

I have heard learned Counsel for the petitioner and learned State Counsel and have gone through the record.

Learned Counsel for the petitioner has argued that the petitioner is a medical student and was studying in Karaganda State Medical University, Republican State Public Enterprises Educational Department, Kazakhstan and had come to India on leave from 10.01.2019 to 28.01.2019. The petitioner was not present at Loharu on the day of alleged occurrence. The petitioner went back in January after finishing his vacation and came back in February and again went back on 28.4.2019. The complainant is a gangster against whom number of FIRs have been registered. The petitioner was not served at any point of time and did not have any knowledge of the proceedings against him. The petitioner was wrongly declared a proclaimed person vide order dated 22.10.2019 on the basis of proclamation issued on 18.09.2019 and published on 20.09.2019 requiring the petitioner to appear before the Court on 26.09.2019 in breach of the prescribed procedure without giving thirty days time to the petitioner for his appearance before the Court. Therefore, the impugned order and all subsequent proceedings arising out of the same may be quashed.

On the other hand, learned State Counsel has submitted that the petitioner absconded and was declared a proclaimed person vide order dated 22.10.2019 after expiry of the period of 30 days from

date of issuance on 18.09.2019 and publication of the proclamation on 20.09.2019. The impugned order does not suffer from any illegality and the petition may be dismissed.

Section 82 of the Cr.P.C., which provides for publication of proclamation against person absconding, reads 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.

(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.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable

under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).” (emphasis supplied)

In *Dilbagh Singh Vs. State of Punjab (P&H) : 2015 (8)*

R.C.R. (criminal) 166 it was held by this Court that in order to ensure that an accused should have a fair opportunity to appear, 30 days clear notice is necessary and the proclamation should be published in the manner provided by law. In that case, proclamation of the petitioner was issued on 20.08.2014 for 23.08.2014 and vide impugned order dated 25.09.2014 the petitioner was declared proclaimed offender. Clear notice of 30 days as mandated under Section 82 of the Cr.P.C. was not given to the petitioner and the procedure for publication of the proclamation was also not followed. The petitioner was held to have been wrongly declared a proclaimed offender and the Impugned order was quashed.

In *Ashok Kumar Vs. State of Haryana and another :*

2013 (4) RCR (Criminal) 550 the case was adjourned by the trial Court vide order dated 04.01.2013 for issuance of proclamation under Section 82 of the Cr.P.C. for 06.03.2014 but period of 30 days had not elapsed from the date of publication till 06.03.2014 and on that date case was

adjourned to 13.03.2014 on which date the petitioner was declared as proclaimed offender. It was held by this Court that the proclamation was not published in accordance with the procedure prescribed under Section 82(1) of the Cr.P.C. by giving mandatory period of 30 days from the date of publication of the proclamation till the date of hearing fixed in the case for appearance of the petitioner and that the mere fact that on 06.03.2014 the Court adjourned the case to 13.03.2014 for completing the period of 30 days could not be treated as compliance of the provisions of Section 82(1) of the Cr.P.C. Accordingly, the order declaring the petitioner as proclaimed offender was set aside.

The facts of the present case are similar to those of the cases referred above. In the present case application under Section 82 of the Cr.P.C. for issuance of proclamation against the petitioner was filed on the ground of warrant of arrest issued against him remaining unexecuted due to the petitioner having absconded. The application was allowed vide order dated 11.09.2019 and proclamation was ordered to be published against the petitioner under Section 82 of the Cr.P.C. and the case was adjourned to 26.09.2019 for statement of the serving Constable. Statement of serving Constable was recorded on 26.09.2019 and the case was adjourned to 22.10.2019 for presence of the petitioner and on non appearance, the petitioner was declared a proclaimed person vide impugned order dated 22.10.2019. A perusal of the proclamation issued shows that proclamation was issued on 18.09.2019 requiring the petitioner to appear on 26.09.2019. The learned Sub Divisional Judicial Magistrate, Loharu was required to issue proclamation by giving thirty days time to the petitioner for his appearance before the Court and the

proclamation was not issued in accordance with the procedure prescribed under Section 82 of the Cr.P.C. Consequently order dated 22.10.2019 declaring the petitioner as a proclaimed person suffers from material illegality and is liable to be set aside.

In view of the above discussion, the petition is allowed and impugned order dated 22.10.2019 passed by learned Sub Divisional Judicial Magistrate, Loharu and FIR No.27 dated 05.02.2020 registered under Section 174-A of the IPC at police Station Loharu on the basis thereof and all subsequent proceedings arising out of the same are quashed.

However, subject to order granting anticipatory bail, if any, passed on petition, if any, filed by the petitioner under Section 438 of the Cr.P.C., the petitioner is directed to surrender before the SHO, Police Station, Loharu/Investigating Officer of the case within fifteen days from receipt of copy of the order and shall be liable to be arrested in case FIR No.12 dated 20.01.2019 registered under Sections 379-B, 506, 365 and 325 of the IPC at Police Station Loharu in accordance with law.

17.08.2020

Kothiwal

(ARUN KUMAR TYAGI)
JUDGE

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