

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

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CRM-M-24381-2020 (O&M)

Date of decision: 03.09.2020

Jasvir Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Lakhwinder Singh Mann, Advocate
for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

CRM-21815-2020

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 passport of the petitioner as Annexure P-10.

For the reasons mentioned in the application, the same is allowed and copy of passport of the petitioner is taken on record as Annexure P-10.

CRM-M-24381-2020

The petitioner has filed present petition under Section 482 of the Cr.P.C. for quashing of order dated 05.12.2014 passed by learned Judicial Magistrate Ist Class, Nakodar in case DDR No.28(A) dated 20.07.2011 registered under Sections 452, 323, 506 and 148 read with Section 149 of the Indian Penal Code, 1860 (for short 'the IPC') as cross case to FIR No.174 dated 20.07.2011 registered under Sections 452, 323, 506 and 148 read with Section 149 of the IPC at Police Station Shahkot, District Jalandhar, whereby the petitioner was declared proclaimed person under Section 82 of the Cr.P.C.

Briefly stated the facts giving rise to the filing of the present petition are that FIR No.174 dated 20.07.2011 was registered under Sections 452, 323, 506 and 148 read with Section 149 of the IPC at Police Station Shahkot, District Jalandhar on statement of Jugraj Singh against Gurdev Singh and others. As a counter blast to the above-said FIR, Gurdev Singh got registered DDR No.28(A) dated 20.07.2011 under Sections 452, 323, 506 and 148 read with Section 149 of the IPC at Police Station Shahkot, District Jalandhar. The name of the petitioner did not find mention in the above-said DDR but during investigation, the petitioner was nominated as an accused in the above-said DDR. As warrant of arrest issued against the petitioner remained unexecuted, vide order dated 16.09.2014 learned Judicial Magistrate Ist Class, Nakodar ordered issuance of proclamation against the petitioner for 28.10.2014. Proclamation issued against the petitioner was not received back on 28.10.2014 on which fresh proclamation was ordered to be issued for 14.11.2014. On 14.11.2014 proclamation was received with report of publication on 04.11.2014. Statement of serving constable regarding publication of proclamation on 04.11.2014 was recorded. As statutory period of 30 days has not elapsed case was adjourned to 05.12.2014 for appearance of the petitioner. On non-appearance the petitioner was declared 'proclaimed person' vide order dated 05.12.2014.

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

Notice of motion.

Pursuant to supply of advance copy of the petition, Mr. Harbir Sandhu, Asstt. A.G. Punjab has appeared and accepted notice 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 submitted that during pendency of the case a compromise was got effected between the parties. As the matter was compromised, the petitioner went abroad in order to earn his livelihood. The petitioner was not served with any notice 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 05.12.2014 on the basis of proclamation issued in compliance of order dated 28.10.2014 for 14.11.2014 which was published on 04.11.2014 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 05.12.2014 after expiry of the period of 30 days from date of publication of the proclamation on 04.11.2014. 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

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. Since warrant of arrest issued against the petitioner could not be executed, vide order dated 16.09.2014 learned Judicial Magistrate Ist Class, Nakodar ordered issuance of proclamation against the petitioner for 28.10.2014. Since proclamation issued against the petitioner was not received back, vide order dated 28.10.2014 fresh proclamation was ordered to be issued for 14.11.2014. The proclamation issued for 14.11.2014 was published on 04.11.2014. Statement of serving constable regarding publication of proclamation on 04.11.2014 was recorded on 14.11.2014 and by noticing that statutory period of 30 days had not elapsed, learned Judicial Magistrate Ist Class, Nakodar adjourned the case to 05.12.2014 for appearance of the petitioner. On non-appearance of the petitioner on 05.12.2014, he was declared 'proclaimed person' vide order dated 05.12.2014. While ordering issuance of proclamation the learned Judicial Magistrate Ist Class, Nakodar was required to specify the date and time in the proclamation for appearance of the petitioner before the Court which could not be less than thirty days from the date of publication of such proclamation. The proclamation issued in compliance with order dated 28.10.2014 for 14.11.2014 which was published on 04.11.2014 was not issued and 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. The mere fact that on 14.11.2014 the Court adjourned the case to 05.12.2014 for completing the period of 30 days from the date of publication on 04.11.2014 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 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 05.12.2014 passed by learned Judicial Magistrate Ist Class, Nakodar in case DDR No.28(A) dated 20.07.2011 registered under Sections 452, 323, 506 and 148 read with Section 149 of the IPC at Police Station Shahkot, District Jalandhar and all subsequent proceedings arising out of the same are quashed.

However, subject to order, if any, granting anticipatory bail to the petitioner passed on petition, if any, filed by him under Section 438 of the Cr.P.C., the petitioner is directed to surrender before the SHO, Police Station, Shahkot/Investigating Officer of the case/trial Court within fifteen days from receipt of copy of the order and shall be liable to be arrested in case DDR No.28(A) dated 20.07.2011 registered under Sections 452, 323, 506 and 148 read with Section 149 of the IPC at Police Station Shahkot, District Jalandhar in accordance with law.

03.09.2020

Kothiylal

(ARUN KUMAR TYAGI)
JUDGE

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