

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

**208-A**

**CRM-M-23777-2020  
Date of decision: 06.10.2020**

Sonu

.....Petitioner

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Aakash Juneja, Advocate  
for the petitioner.

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

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**ARUN KUMAR TYAGI, J (ORAL)**

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of impugned order dated 01.10.2019 passed by learned Chief Judicial Magistrate, Rohtak in case FIR No.737 dated 15.11.2018 registered under Sections 406 and 420 of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station City Rohtak, whereby the petitioner was declared proclaimed person under Section 82 of the Cr.P.C., and all consequential proceedings arising out of the same.

Briefly stated the facts relevant for disposal of present petition are that the above-said FIR was registered on complaint of Satyendra Giri against unknown person regarding fraudulent withdrawal of Rs.60,000/- from his account. During investigation supplementary statement of the complainant was recorded under

Section 161 of the Cr.P.C. wherein the petitioner was named by the complainant to be the person who had committed the fraud. The petitioner failed to appear before the Court despite publication on 23.09.2019 of proclamation issued in compliance of order dated 19.08.2019 on which the petitioner was declared proclaimed person vide order dated 01.10.2019.

Feeling aggrieved from the above-said order the petitioner has filed the present petition for quashing thereof along with consequential proceedings.

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 the petitioner was wrongly declared proclaimed person vide order dated 01.10.2019 in breach of the prescribed procedure. The petitioner was not given thirty days time for his appearance before the Court. Therefore, the impugned order and all subsequent proceedings arising out of the same may be quashed. In support of his arguments learned Counsel for the petitioner has placed reliance on the judgment of this Court passed in ***CRM-M-13638-2013(O&M) titled as Ashok Kumar Vs. State of Haryana and another decided on 05.08.2013.***

On the other hand, learned State Counsel has submitted that the petitioner absconded and was declared a proclaimed person vide order dated 01.10.2019 after expiry of the period of 30 days from publication of the proclamation on 23.09.2019. The impugned order does not suffer from any illegality and the petition may be dismissed.

On consideration of the submissions made by learned

Counsel for the petitioner and learned State Counsel and on perusal of the relevant record, I am of the considered view that the impugned order dated 01.10.2019 suffers from material illegality and is liable to be quashed with all subsequent proceedings arising out of the same.

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). ”*

The essential requirements of Section 82 of the Cr.P.C. for issuance and publication of proclamation against an absconder and declaring him as proclaimed person/offender may be summarized as under:-

- (i) Prior issuance of warrant of arrest by the Court is *sine qua non* for issuance and publication of the proclamation and the Court has to first issue warrant of arrest against the person concerned. (See ***Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561***).
- (ii) There must be a report before the Court that the person against whom warrant was issued had absconded or had been concealing himself so that the warrant of arrest could not be executed against him. However, the Court is not bound to take evidence in this regard before issuing a Proclamation under Section 82 (1) of the Cr.P.C.. (See ***Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561***).
- (iii) The Court cannot issue the Proclamation as a matter of course because the Police is asking for it. The Court must be *prima facie* satisfied that the person has absconded or is concealing himself so that the warrant of arrest, previously issued, *cannot* be executed, despite reasonable diligence. (See ***Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366 and Devender Singh Negi Vs. State of U.P. : 1994 CrL LJ (Allahabad HC) 1783***).
- (iv) The requisite date and place for appearance must be specified in the proclamation requiring such person to appear on such date at the specified place. Such date must not be less than 30 clear days from the date of issuance and publication of the proclamation. (See ***Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826 and Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339***).
- (V) Where the period between issuance and publication of the proclamation and the specified date of hearing is less than thirty days, the accused cannot be

declared a proclaimed person/offender and the proclamation has to be issued and published again. (See ***Dilbagh Singh Vs. State of Punjab (P&H) : 2015 (8) R.C.R. (criminal) 166*** and ***Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550***)

- (vi) The Proclamation has to be published in the manner laid down in Section 82 (2) of the Cr.P.C.. For publication the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house. The three sub-clauses (a)-(c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. (See ***Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368***). Where the Court so orders a copy of the proclamation has to be additionally published in a daily newspaper circulating in the place in which the accused ordinarily resides. Advisably, proclamation has to be issued with four copies so that one each of the three copies of the proclamation may be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides, to some conspicuous place of such town or village and to some conspicuous part of the Court-house and report regarding publication may be made on the fourth copy of the proclamation. Additional copy will be required where the proclamation is also required to be published in the newspaper.
- (vii) Statement of the serving officer has to be recorded by the Court as to the date and mode of publication of the proclamation. (See ***Birad Dan Vs. State : 1958 CriLJ 965***).
- (viii) The Court issuing the proclamation has to make a statement in writing in its order that the proclamation was duly published on a specified day in a manner specified in Section 82(2)(i) of the Cr.P.C.. Such statement in writing by the Court is declared to be conclusive evidence that the requirements of Section 82 have been complied with and that the proclamation was published on such day. (See ***Birad Dan Vs. State : 1958 CriLJ 965***).
- (xi) The conditions specified in Section 82(2) of the Cr.P.C. for the publication of a Proclamation against

an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the Proclamation and proceedings subsequent thereto a nullity. (See ***Devendra Singh Negi alias Debu Vs. State of U.P. and another : 1994 CriLJ 1783*** and ***Pal Singh Vs. The State : 1955 CriLJ 318***).

In the present case learned Chief Judicial Magistrate, Rohtak ordered issuance of proclamation against the petitioner on application filed by the concerned SHO/IO vide order dated 19.08.2019 which reads as under:-

*“Warrant of arrest issued against the accused Sonu received back serviced through his wife. Prosecution has moved an application for issuance of proclamation against the accused Sonu. Heard. In view of the contents mentioned in the application, the same is allowed. Now proclamation u/s 82 of the Cr.P.C. against the accused Sonu be issued for 23.09.2019. Executing constable is also directed to appear before the court on date fixed for making his statement regarding proclamation.”*

Learned Chief Judicial Magistrate, Rohtak was required to record his satisfaction that in view of the material on record there was reasonable ground to believe that the petitioner was absconding or concealing himself so that warrant of arrest issued against him could not be executed. Learned Chief Judicial Magistrate, Rohtak did not apply his mind to this aspect and did not record his satisfaction as required. Merely allowing the application filed by the police in view of the contents thereof without recording such satisfaction as required by the statutory provision was not sufficient compliance with the condition essential for issuance of proclamation. Reference in this regard may be made to judicial precedents reported as ***Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366*** and ***Devender Singh Negi Vs. State of U.P. : 1994 Crl LJ (Allahabad HC) 1783***.

Further, a perusal of order dated 23.09.2019 passed by learned Chief Judicial Magistrate, Rohtak shows that ASI Kuldeep Singh who published the proclamation merely affixed one copy of the proclamation outside the out of the accused and other copy of the same on the notice board of the Court. ASI Kuldeep Singh did not publicly read out the same in some conspicuous place of the town/village where the accused ordinarily resided. Therefore, proclamation was not published as per mandatory requirements of Section 82(2)(i) of the Cr.P.C. In ***Balwant Singh Vs. the State (Punjab High Court): 1960 PLR 189***, where the proclamation was not publicly read in some conspicuous place in the town/village in which the accused ordinarily resided, the proclamation was held not duly published and the proclamation and subsequent proceedings arising out therefrom were quashed.

Furthermore, in the present case vide order dated 19.08.2019 proclamation was ordered to be published against the petitioner under Section 82 of the Cr.P.C. requiring the petitioner to appear before the Court on 23.09.2019. The proclamation was published by ASI Kuldeep Singh on 19.08.2019 and the petitioner did not get statutory minimum period of thirty days for his appearance before the Court on 23.09.2019. Vide order dated 23.09.2019 learned Chief Judicial Magistrate, Rohtak adjourned the case to 01.10.2019 for awaiting the appearance of the petitioner on the ground that statutory period of thirty days had not elapsed. Learned Chief Judicial Magistrate, Rohtak could not extend the time by simply adjourning the case for awaiting appearance of the petitioner and was mandatorily

required to issue the proclamation again for publication thereof in accordance with the provisions of Section 82(2) of the Cr.P.C.. For judicial precedent in this regard reliance may be placed on judgment of this Court reported as *Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550*.

It follows that the petitioner was wrongly declared proclaimed person vide impugned order dated 01.10.2019 in breach of the prescribed procedure and impugned order dated 01.10.2019 suffers from material illegality and is liable to be set aside along with all consequential proceedings arising therefrom.

In view of the above discussion, the petition is allowed and impugned order dated 01.10.2019 passed by learned Chief Judicial Magistrate, Rohtak and all subsequent proceedings arising therefrom 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 trial Court within fifteen days from receipt of a copy of this order and on such surrender the petitioner shall be liable to be remanded to judicial custody in case FIR No.737 dated 15.11.2018 registered under Sections 406 and 420 of the IPC in Police Station City Rohtak in accordance with law subject to order for grant of regular bail to him.

**06.10.2020**

kavneet singh

**(ARUN KUMAR TYAGI)  
JUDGE**

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