

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

224

CRM-M-25921-2020

Date of decision: 22.09.2020

Harvinder Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Ivneet Singh Pabla, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana
for respondent No. 1- State.

Respondent No.2 did not appear
despite service.

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 order dated 22.11.2019 passed by learned Judicial Magistrate First Class, Pehowa in complaint case NACT No. 337 of 2018 titled as 'Kala Singh Vs. Harminder Singh' under Section 138/142 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') whereby the petitioner was declared proclaimed person under Section 82 of the Cr.P.C. and all subsequent proceedings including FIR No.77 dated 11.02.2020 registered under Section 174-A of the IPC in Police Station Pehowa arising out of the same.

Briefly stated, the petition has been filed on the averments

that respondent No.2 filed above said complaint against the petitioner on which the petitioner was summoned to face trial under Section 138 of the N.I. Act, 1881. The petitioner never received any summons and was not aware of the warrant of arrest issued against him and could not appear before the learned trial Court. Proclamation issued by the learned trial Court was not publicly read in the village where the petitioner was residing. The petitioner has been declared proclaimed person vide impugned order dated 22.11.2019 in breach of the prescribed procedure. Subsequently, the matter was also settled between the parties and the complaint was withdrawn by respondent No.2. Therefore, the impugned order dated 22.11.2019 and all subsequent proceedings including FIR No.77 dated 11.02.2020 registered under Section 174-A of the IPC in Police Station Pehowa arising out of the same may be quashed.

On notice, learned State Counsel appeared for respondent No. 1 but respondent No. 2 did not appear despite service.

Print out of copies of orders passed in the complaint case by learned Judicial Magistrate First Class, Pehowa from 12.06.2019 till 19.02.2020 downloaded from the website of District Court Kurukshetra are taken on record.

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

Learned Counsel for the petitioner has submitted that learned Judicial Magistrate First Class, Pehowa ordered issuance of proclamation on the ground that presence of the petitioner could not be procured through ordinary process and did not record his satisfaction

that the petitioner had absconded or was concealing himself so that warrant of arrest could not be executed. The proclamation was not publicly read in the village where the petitioner was residing. The impugned order was passed in breach of the prescribed procedure. Subsequently, on compromise between the parties, the complaint was withdrawn by respondent No.2 and the impugned order and proceedings arising out of the same are abuse of process. Therefore, the impugned order and subsequent proceedings arising out of the same may be quashed.

In support of his submissions learned Counsel for the petitioner has relied upon the judgments passed in ***Vimalben Ajitbhai Patel Vs. Vatslaben Ashokbhai Patel (Supreme Court) : 2008(2) RCR (Criminal) 699; Balwant Singh Vs. the State (Pb. High Court) : 1960 PLR 189 and Deeksha Puri Vs. State of Haryana (Pb. and Hy. High Court) : 2013 (1) RCR Criminal 159.***

On the other hand, learned State Counsel has submitted that the petitioner absconded and was declared a proclaimed person vide order dated 22.11.2019 after expiry of the period of 30 days from publication of the proclamation on 19.10.2019. 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 22.11.2019 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 Judicial Magistrate First Class, Pehowa ordered publication of proclamation against the petitioner vide order dated 27.09.2019 which reads as under:-

“Non-bailable warrant issued against accused Harminder Singh received back executed through his family members, but he did not appear.

Heard. This Court is satisfied that presence of the accused persons cannot be procured through ordinary process. Therefore, proclamation under Section 82 Cr.P.C. be issued against the accused Harminder Singh for 22.11.2019. Executing constable is directed to appear before the Court on 09.10.2019 for making his statement regarding proclamation.”

Learned Judicial Magistrate First Class, Pehowa 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 or arrest issued against him could not be executed. Learned Judicial Magistrate First Class, Pehowa did not apply his mind to this aspect and did not record his satisfaction as required. Therefore, the condition essential for issuance of proclamation was not complied with. 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.***

Even though in the present case proclamation issued as per order dated 10.10.2019 requiring the accused to appear on 22.11.2019 was published on 19.10.2019 giving 30 days time to the accused for appearance before the Court but publication of the proclamation was not in accordance with the mandatory requirements of Section 82(2)(i)

of the Cr.P.C.. In his statement the executing constable stated that he affixed one copy of the proclamation on house of the accused and one copy in front of the court. The executing constable did not publicly read out the proclamation in some conspicuous place in the village where the petitioner ordinarily resided. Thus, the essential condition laid down in Section 82(2)(i)(a) of the Cr.P.C. as to the mode of publication of the proclamation was not complied with. In **Balwant Singh Vs. The State, 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.

In view of the above referred judicial precedents and the above discussed facts and circumstances of the case, issuance and publication of the proclamation was in breach of the prescribed procedure and the impugned order declaring the petitioner as proclaimed person and all subsequent proceedings arising out of the same including FIR No.77 dated 11.02.2020 registered under Section 174-A of the IPC in Police Station Pehowa are liable to be quashed. Since the impugned order and all subsequent proceedings arising therefrom including FIR No.77 dated 11.02.2020 registered under Section 174-A of the IPC in Police Station Pehowa are liable to be quashed, the question of the same being abuse of process in view of the subsequent withdrawal of complaint by respondent No.2 does not arise and is not, therefore, required to be gone into and adjudicated upon.

Accordingly, the petition is allowed and impugned order

dated 22.11.2019 passed by learned Judicial Magistrate First Class, Pehowa in complaint case NACT No. 337 of 2018 dated 22.10.2018 titled as 'Kala Singh Vs. Harminder Singh' under Section 138/142 of the N.I. Act and all subsequent proceedings arising therefrom including FIR No.77 dated 11.02.2020 registered under Section 174-A of the IPC in Police Station Pehowa are quashed.

22.09.2020

kavneet singh

(ARUN KUMAR TYAGI)
JUDGE

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