

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

288

CRM-M-27524-2019

Date of decision: 18.02.2020

Kamal Kishore

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. Arjun Singh Yadav, AAG Haryana
for the respondent No.1-State.

None for respondent No.2.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner has filed present petition under Section 482 for quashing of order dated 20.11.2014 passed by learned Judicial Magistrate First Class, Faridabad in complaint case No.NACT/874/2014 titled 'Dharambir Vs. Kamal Kishore' filed under Section 138 of the Negotiable Instruments Act, 1881 whereby the petitioner was declared proclaimed person.

Briefly stated the facts giving rise to the filing of the present petition are that respondent No.2 filed above-said complaint on the averments that the petitioner had taken friendly loan of Rs.10,000,00/- in the month of February, 2013 for the period of three months and had issued cheque dated 18.06.2013 for Rs.10,000,00/- for discharge of his subsisting liability which was dishonoured with remarks 'fund insufficient' and the petitioner failed to pay the amount of the cheque within the stipulated period of 15 days from service of the

legal notice. Preliminary evidence of the complainant was recorded and the petitioner was summoned to face trial by learned Judicial Magistrate First Class, Faridabad. On non-appearance of the petitioner, he was declared proclaimed person vide order dated 20.11.2014.

Feeling aggrieved, the petitioner has filed present petition challenging the above-said order.

Learned Sate Counsel has submitted that respondent-State was not party to the above-said complaint case and has been arrayed in the present petition as proforma respondent.

Notice of the petition was issued to respondent No.2-complainant but none has appeared for respondent No.2-complainant despite due service.

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

Learned Counsel for the petitioner has argued that proclamation issued on 22.09.2014 requiring the petitioner to appear before the Court on 20.10.2014 was published on 25.09.2014 and the petitioner was declared proclaimed person vide order dated 20.11.2014 in breach of the prescribed procedure. Therefore, the impugned order may be quashed. In support of his contention, learned Counsel for the petitioner placed reliance on judgment of this Court in ***Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550.***

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 ***Ashok Kumar's Case (Supra)*** 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 prescribed procedure 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.

In the present case, proclamation was issued on 22.09.2014 requiring the petitioner to appear before the Court on 20.10.2014 and was published on 25.09.2014 in breach of the mandatory provisions of Section 82 of the Cr.P.C. requiring giving of 30 days time for appearance of the person absconding before the Court. Mere subsequent adjournment of the case on 20.10.2014 to 20.11.2014 for awaiting appearance of the petitioner did not cure the illegality. Consequently order dated 20.11.2014 declaring the petitioner as

proclaimed person suffers from material illegality and is liable to the set aside.

In view of the above discussion, the petition is allowed and impugned order dated 20.11.2014 passed by learned Judicial Magistrate First Class, Faridabad is set aside and order dated 01.11.2019 passed by this Court, whereby the petitioner was ordered to be released on interim bail is made absolute and order dated 01.11.2019 and bail bonds furnished in compliance therewith shall enure till conclusion of trial

18.02.2020

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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