

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

CRM-M-28583-2019
Date of Decision:-22.1.2020

SRIKANT SHEKHAWAT @ ADITYA SANGVI

... Petitioner

Versus

UNION TERRITORY, CHD

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Anureet S. Sidhu, Advocate
for the petitioner.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court challenging order dated 2.5.2016 (Annexure P-2) vide which the petitioner was declared a proclaimed offender.
2. Notice of motion.
3. On the asking of the Court, Ms. Ashmia Mor, Addl. P.P. U.T. Chandigarh accepts notice on behalf of the respondents. A complete set of petition has been furnished to her.

4. Learned counsel for the petitioner has submitted that the trial Court has absolutely disregarded the settled procedure mandated as per Section 82 of Cr.P.C. while declaring the petitioner as proclaimed offender. It has been submitted that it was initially on 16.5.2015, that the trial Court ordered for issuance of proclamation in terms of Section 82 Cr.P.C. returnable on 3.7.2015 and subsequently on account of proclamation not having been effected, fresh proclamation was issued for 16.9.2015. It appears that since the proclamation was again not effected, the trial Court vide order dated 16.9.2015 again ordered for issuance of proclamation for 26.11.2015.
5. A perusal of zimni orders recorded thereafter show that no fresh proclamation was ordered to be issued thereafter but somehow proclamation was effected on 2.4.2016 as would be evident from the statement of Head Constable Meg Raj (Annexure P-5).
6. Statement of the aforesaid Head Constable was recorded on 22.4.2016 is to the following effect:-

“I was entrusted the proclamation summons of accused for effecting service upon the accused Sachin Bhagmal. This proclamation was executed on dated 2.4.2016. Despite my best efforts the accused Sachin Bhagmal was not available at the given address therefore, I affixed on copy of proclamation summons outside the house of accused, one copy was affixed at the public place and third copy was affixed on the notice board of District Court, Chandigarh. Upon the fourth copy, I submitted my report. The proclamation summons is Ex.PX and

report Ex.PY which is in the hand and bears my signatures.”

7. Thereafter on 22.4.2016 the following order was passed by learned Judicial Magistrate Ist Class, Chandigarh:-

“Proclamation issued against the accused Sachin Bhagmal received back duly executed. Statement of serving constable to this effect was also recorded. The proclamation was effected on 2.4.2016 and mandatory period of 30 days has not been elapsed. Therefore case is now adjourned to 2.5.2016 awaiting appearance of the accused.”

8. Subsequently, on the next date the petitioner was declared proclaimed offender vide impugned order dated 2.5.2016.
9. The aforesaid zimni orders reflect that proper procedure of affording a clear period of 30 days after effecting proclamation upto the date nominated for causing appearance has not been afforded in terms of Section 82 Cr.P.C. Adjournment of the case by Trial Court before declaring an accused as proclaimed offender will not rectify the defect where the period between the day when proclamation was effected and the day nominated for causing appearance of accused is less than 30 days. This Court in Ashok Kumar Versus State of Haryana and another, 2013(4) R.C.R. (Criminal) 550 in identical circumstances had quashed an order whereby an accused had been declared proclaimed offender mainly on the ground that a clear period of 30 days had not been provided. In view of the aforesaid violation of mandatory provision of Section 82 Cr.P.C., the order dated 2.5.2016 (Anneuxre P-2)

declaring the petitioner as proclaimed offender cannot sustain and the same is hereby set aside.

10. Consequently the petition is accepted and the impugned order is set aside.

22.1.2020
Gaurav Sorot

(GURVINDER SINGH GILL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No