

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

CRM-M-54222-2019 (O&M)
Date of Decision:- 25.2.2020

Vikaas Kadian

... Petitioner

Versus

State of UT Chandigarh

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Viren Sibal, Advocate for the petitioner.

Mr. Sukant Gupta, Addl. P.P. UT., Chandigarh.

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court seeking quashing of order dated 26.7.2019 (Annexure P-1) passed by the Court of learned Chief Judicial Magistrate, Chandigarh whereby the petitioner has been declared as a proclaimed person in terms of Section 82 Cr.P.C.
2. The learned counsel for the petitioner while assailing the impugned order has submitted that in the present case, the petitioner was never served with the summons and nor were the bailable warrants ever executed and infact the entire proceedings in respect of Section 82 Cr.P.C. had been conducted by mentioning an incorrect address of the petitioner and as such the petitioner always remained unaware about the entire proceedings. The learned counsel has submitted that it is only in case the petitioner is found to be intentionally evading his arrest that such proceedings could have been initiated and since the facts of the present case do not show any such intentional evasion on

part of the petitioner, the entire proceedings initiated in terms of Section 82 Cr.P.C. as well as the impugned order deserves to be set aside.

3. The learned counsel in order to hammer forth his aforesaid submission has drawn the attention of this Court to a copy of proclamation notice dated 3.6.2019 (Annexure P-6) wherein the address of the petitioner is mentioned as H.No.514, Vigyan Vihar Society, Sector 49, Chandigarh. The learned counsel has also referred to the statement of Head Constable Davinder Singh (Annexure P-7) recorded by the Chief Judicial Magistrate, Chandigarh on 10.7.2019 wherein he has stated that he was entrusted with proclamation of accused Vikaas Kadian, resident of H.No.514, Vigyan Vihar Society, Sector 49, Chandigarh and that he had visited the said address on 6.6.2019 but the accused was not found present there and had pasted a copy of proclamation at the given address. The learned counsel has also referred to a copy of application dated 23.1.2019 moved by the Investigating Officer in the Court of Chief Judicial Magistrate, Chandigarh requesting for issuance of non-bailable warrants of Vikaas Kadian by referring his address as H.No.514, Vigyan Vihar Society, Sector 49, Chandigarh. The learned counsel for the petitioner has next referred to the copy of Aadhar card of the petitioner Vikaas Kadian (Annexure P-9) wherein his address is mentioned as H.No.513, Vigyan Vihar Society, Sector 49, Chandigarh and also to his Voter Card wherein also his address is mentioned as H.No.513, Vigyan Vihar Society, Sector 49, Chandigarh.
4. Opposing the petition, the learned State counsel has submitted that in the present case, the present petition filed by the petitioner challenging order dated 26.7.2019 passed by the Court of learned Chief Judicial Magistrate,

Chandigarh is not maintainable inasmuch as the impugned order is a revisable order and infact the petitioner had filed a revision petition in the Court of Sessions, Chandigarh but subsequently withdrew the same without seeking permission to file afresh or to approach this Court and that the petitioner having exhausted his remedy of filing revision petition was barred from approaching this Court by way of filing a petition under Section 482 Cr.P.C. which virtually amounts to filing of a second revision petition.

5. The learned State counsel has further submitted that the petitioner in any case was fully aware of the FIR in question as well as the proceedings initiated against him for his arrest and also about the proclamation proceedings. It has been submitted that it was due to some clerical error that warrants were issued at an incorrect address i.e. H.No.514, Vigyan Vihar Society, Sector 49, Chandigarh and infact an application was filed subsequently on behalf of the Investigating Officer on 12.3.2019 for issuance of proclamation at the correct address on 12.3.2019, a copy whereof is annexed with the reply filed by the State as Annexure R-2(colly).
6. It has also been submitted by learned State counsel that the petitioner cannot feign ignorance about the proclamation proceedings inasmuch as from a perusal of order dated 26.7.2019 (Annexure P-1) passed by learned Chief Judicial Magistrate, Chandigarh, it is clearly borne out that the petitioner was fully aware about the said proceedings and had infact moved an application before the trial Court seeking adjournment of the proceedings with a representation that he himself would surrender before the trial Court in case his application for anticipatory bail pending before Court of Sessions is dismissed.

7. I have considered rival submissions addressed before this Court. In order to appreciate the contentions, it would be apposite to bear in mind the provisions of Section 82 Cr.P.C., which read as follows :-

“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.”

8. A perusal of the aforesaid provision does show that in case the trial Court is satisfied that an accused is evading his arrest then proceedings for declaring him proclaimed offender may be initiated. Section 82(2) Cr.P.C. prescribes the manner in which the proclamation is to be published and also prescribes

the period which is to be afforded to the accused to cause his appearance which is specified as 30 days from the date of publication of such proclamation. It goes without saying that since declaring a person as proclaimed offender would visit him with some penal consequences, the procedure prescribed therein under Section 82 Cr.P.C. should be strictly adhered to. It also goes without saying that the accused is not to be prejudiced in any manner. However, at the same time a pragmatic approach is required to be adopted and while determining as to whether there has been compliance of the provisions, the Court is not to go overboard and is to ensure compliance as far the same is practically possible and serves the purpose to be achieved.

9. In the present case, the petitioner certainly knew about the proclamation proceedings and was fully aware about the same, as is borne out from order dated 26.7.2019 (Annexure P-1) wherein he himself represented to the Court that in case his application for grant of anticipatory bail is dismissed by the Sessions Court, he would surrender before the Court concerned. As such, it cannot be said that the petitioner was altogether in dark about pendency of the case against him. Rather he was having recourse to law seeking protection from his arrest. Further, it is not the case that Flat No.513 and 514 are very far off from each other so as to have caused any prejudice to the petitioner or to infer that he was not aware of the said proceedings. In any case, apart from fixation of proclamation notice near his residence, the same was also affixed at a prominent place and also in the court premises as is evident from the statement from the serving official, annexed as Annexure P-7. In these circumstances, the proclamation having been duly effected on

6.6.2019 requiring the petitioner to appear in the Court on 10.7.2019 i.e. affording him a period of more than 30 days as mandated under the provisions of Section 82 Cr.P.C., and the petitioner evidently being aware of said proceedings as is borne out from order dated 26.7.2019 (Annexure P-1), no fault can be found in the impugned order dated 26.7.2019 and the same is upheld.

10. This Court further finds that the petition would also suffer on account of maintainability inasmuch as the petitioner having filed a revision petition before the Courts of Sessions challenging impugned order dated 26.7.2019 chose to withdraw the same without seeking permission to file afresh or to get it adjudicated before some other forum. Thus, it shall be deemed that his remedy of filing revision petition stood exhausted. Consequently, filing of this petition under Section 482 Cr.P.C. would virtually amount to filing a second revision, which is an abuse of process of law. No doubt, this Court is not powerless under Section 482 Cr.P.C. and in a given case, it can choose to show indulgence and set aside some order in case it is found that the same is resulting in travesty of law. However, in the present case, in view of the discussion made above, no such circumstances are made out to justify interfere with the impugned order dated 26.7.2019.

11. Finding no merit in the petition, the same is hereby dismissed.

25.2.2020

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No