

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

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**CRM-M-17744-2021
Date of decision: 28.04.2021**

Manohar Lal Bhalla

.....Petitioner

Versus

State of Punjab

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Navkiran Singh, Advocate for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

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

Petitioner-**Manohar Lal Bhalla** 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 22.03.2021 passed by learned Additional Chief Judicial Magistrate, Jalandhar in case FIR No.227 dated 19.11.2020 registered under Section 302 and 307 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station Division No.3, Jalandhar, whereby the petitioner was declared proclaimed offender 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 Harjot Singh. In his complaint Harjot Singh alleged that Manohar Lal Bhalla (the petitioner) has a shop adjacent to shop of the complainant. He wanted to buy the shop of the complainant and further expand his shop. On 19.11.2020 at about 8 a.m. when he along with his father-Jaswinder Singh was present at this shop, Manohar Lal Bhalla (the petitioner) and his son Rinku Bhalla along with his few friends armed with iron rods came there and started hurling abuses at his father. Two customers Vicky Gill and Gaurav Rajpal were also present at the shop at that time. The petitioner grabbed his father and exhorted and that

he would not be allowed to go alive today. Rinku Bhalla gave iron rod blow to his father with intention to kill him. When Vicky Gill and he came to rescue his father, Rinku Bhalla also inflicted injuries with iron rod on head and left arm of Vicky Gill. The other two companions of Rinku Bhalla inflicted injuries on arms and back of the complainant with intent to kill him. When they raised hue and cry then people gathered there on which the accused fled from the spot.

On failure of the petitioner to appear before the Court despite publication of proclamation, the petitioner was declared proclaimed offender vide order dated 31.01.2020.

Feeling aggrieved from the above-said order the petitioner has filed the present petition for quashing of the same along with all consequential proceedings arising therefrom.

Pursuant to supply of advance notice, Mr. P.S. Walia, Asstt. A.G. Punjab has appeared and opposed the petition. However, no reply has been filed by respondent-State.

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 offender vide order dated 23.03.2021 in breach of the prescribed procedure. The proclamation was not publicly read out in some conspicuous part of the town where the petitioner was residing. The petitioner was not given 30 days time for his appearance before the Court. Therefore, the impugned order suffers from material illegality and all subsequent proceedings arising out of the same may be quashed.

On the other hand, learned State Counsel has submitted that the petitioner absconded and was declared proclaimed offender vide order dated 23.03.2021 after expiry of the period of 30 days from publication of the proclamation. 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 23.03.2021 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).

It may be observed that in the present case on receipt of non-bailable warrant of arrest issued against the petitioner unexecuted, learned Chief Judicial Magistrate, Jalandhar in his order dated 21.01.2021 recorded his satisfaction that the petitioner was intentionally avoiding service and his presence could not be procured through non-bailable warrant of arrest and accordingly ordered publication of proclamation under Section 82 of the Cr.P.C. for 22.03.2021. The proclamation was published on 05.02.2021 by ASI Jaspal Singh and on expiry of the period of more than 30 days from the date of publication, the petitioner was, on his failure to appear before the Court, declared to be proclaimed offender vide order dated 22.03.2021. However, a perusal of report of ASI Jaspal Singh shows that one copy of the proclamation was affixed at the address of the accused and second copy was published at the public place where people commonly passed and third copy was affixed on the notice board outside the Court. However, the proclamation was not publicly read out as required by Section 82(2)(1)(a) of the Cr.P.C. at some conspicuous place of the town in which the petitioner ordinarily last resided before allegedly absconding from the same.

In ***Harvinder Singh Vs. State of Haryana and another : 2021 (1) RCR (Criminal) 493*** where proclamation was not publicly read out in some conspicuous place in village where the petitioner ordinarily resided, it was held that mandatory condition laid down in Section 82(2)(i)(a) of the Cr.P.C. as to mode of publication of the proclamation was not complied with and the order declaring the petitioner as proclaimed person and all consequential proceedings were quashed. The facts of the present case are similar to those of the case referred above and observations made therein are fully applicable to the present case also. It follows that the petitioner was wrongly declared proclaimed offender vide impugned order dated 22.03.2021 in breach of the prescribed procedure and impugned order dated 22.03.2021 suffers from material illegality and is liable to be quashed.

In view of the above discussion, the petition is allowed and

impugned order dated 22.03.2021 passed by learned Additional Chief Judicial Magistrate, Jalandhar in case FIR No.227 dated 19.11.2020 registered under Sections 302 and 307 read with Section 34 of the IPC in Police Station Division No.3, Jalandhar is quashed along with all consequential proceedings arising out of the same.

However, the petitioner is directed to surrender before the trial Court in case FIR No.227 dated 19.11.2020 registered under Sections 302 and 307 read with Section 34 of the IPC in Police Station Division No.3, Jalandhar within **four weeks** and on such surrender, subject to order, if any, for grant of anticipatory bail, the petitioner shall be liable to be remanded to police/judicial custody in accordance with law as the case may be. Needless to observe that on surrender the petitioner shall be entitled to apply to the trial Court for grant of regular bail and the trial Court shall be bound to dispose of the same expeditiously in accordance with law.

However, nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the trial Court in disposal of the petition for grant of regular bail or the case on merits.

28.04.2021

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(ARUN KUMAR TYAGI)
JUDGE

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