

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

240-2

CRM-M-23832-2021

Date of decision: 16.11.2021

Surjit Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Inderjit Sharma, Advocate
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab
for the respondent-State.

Mr. Karan Choudhary, Advocate
for the complainant.

MANJARI NEHRU KAUL, J. (ORAL)

Challenge has been made to the order dated 02.04.2021 (Annexure P-5) vide which the petitioner was declared a proclaimed offender in FIR No.009 dated 14.01.2021 under Section 376 IPC registered at Police Station Dina Nagar, District Gurdaspur.

The impugned order has been assailed primarily on the ground that the Court gravely erred in observing that despite multiple raids having been conducted at the house of the accused-petitioner Surjit Singh, he had been evading arrest. It was submitted by learned counsel for the petitioner that the provisions of Section 82 Cr.P.C. which were mandatory in nature had not been complied with inasmuch as though on 19.02.2021 vide Annexure P-2, the publication had been issued directing the serving constable to execute it before 22.02.2021 and to appear in the Court for recording his statement qua due execution of proclamation, however, there was no order on record of the said date i.e. 22.02.2021, in the said regard. It has, therefore, been urged that in the aforementioned circumstances there was no manner of

doubt that there had been no proper compliance of the mandatory provisions of Section 82 Cr.P.C. In support, he has placed reliance upon *Ashok Kumar Vs. State of Haryana and another : 2013(4) RCR (Criminal) 550; Jagmal Singh and others Vs. State of Haryana and others : 2015(1) RCR (Criminal) 300* and *Deepak Kumar @ Deepak Saha Vs. State (Delhi) : 2017(5) RCR (Criminal) 730*.

On being put to notice, the State has filed its reply by way of affidavit of Rajbir Singh, PPS, Deputy Superintendent of Police, Dinanagar, District Gurdaspur.

Learned State counsel, while opposing the prayer and submissions of the counsel opposite, has invited the attention of this Court to Annexure P-3 wherein it has been stated that vide order dated 19.02.2021, the serving constable was directed to get his statement recorded with regard to the execution of the proclamation only, on 22.02.2021 and vide same order the main case was adjourned to 26.03.2021, which duly found reflected in Annexure P-3 itself. Learned State counsel has submitted that on 26.03.2021, due to the Bharat Bandh, the case was adjourned to 02.04.2021 to await the appearance of accused-Surjit Singh. Learned State counsel has further invited the attention of this Court to Annexure P-5, which reveals that the accused-petitioner Surjit Singh neither put in an appearance nor was brought before the Court on 02.04.2021 despite the service on him, through proclamation, having been duly effected on 22.02.2021. Learned State counsel has thus, submitted that once the impugned order declaring the petitioner a proclaimed offender was passed beyond the statutory period of 30 days, it could not be faulted with and the submissions made by

learned counsel for the petitioner qua non-compliance of Section 82 Cr.P.C. were devoid of merit.

I have heard learned counsel for the parties and perused the impugned order as well as all other material on record.

It would be apposite to reproduce the provisions of Section 82 Cr.P.C., which reads thus :-

“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)."

A perusal of Sub-Section (3) of Section 82 Cr.P.C. makes it abundantly clear that once statement in writing stands duly recorded by the Court concerned qua the publication of proclamation along with date and time, it would be presumed that the proclamation had been effectively served on the accused person. In other words, once the statement of the serving constable stood recorded and that too in writing, it would amount to conclusive evidence of compliance of Section 82 Cr.P.C. and the proclamation having been duly effected.

Coming to the case in hand, it stands reflected in the impugned order that the proclamation stood duly effected on 22.02.2021 and in addition, it was much beyond the period of 30 days that the impugned order declaring him a proclaimed offender was passed. The case laws on which reliance has been placed by learned counsel for the petitioner would not come to the rescue of the petitioner as the facts of the instant case are clearly distinguishable from the cases relied upon.

In view of the facts and circumstances as enumerated hereinabove, the present petition being devoid of merit, is dismissed.

16.11.2021

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**(MANJARI NEHRU KAUL)
JUDGE**

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