

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Miscellaneous No.M-24134 of 2021

Date of Decision: November 29th, 2021

Avtar Singh

..... APPLICANT-APPELLANT

VERSUS

State of Punjab

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

. . .

PRESENT: - Mr. Ashish Aggarwal, Advocate, for the petitioner.

Mr. Tanvir Joshi, Assistant Advocate General, Punjab.

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Sant Parkash, J

The present petition has been preferred by the petitioner under Section 482 Cr.P.C. for quashing impugned order dated 20.08.2018 (Annexure P-7) passed by the Chief Judicial Magistrate, Tarn Taran, whereby he has been declared as Proclaimed Offender in case FIR No.171 dated 22.05.2014 under Section 27 of the Narcotic Drugs & Psychotropic Substances Act, 1985, registered with Police Station, City, Tarn Taran.

Succinctly, on 22.05.2014, the petitioner alongwith three others was apprehended by the police party while consuming intoxicant substance with the help of candle and match box. An unburnt match box, silver foil and candle were recovered on their personal search, on the basis of which, the present FIR was registered.

Petitioner was granted regular bail by the trial court vide order dated 21.06.2014 (Annexure P-2). After the concession of regular bail, the petitioner put in appearance before the trial court upto 11.01.2018, on which date, neither petitioner nor his counsel put in appearance. As a result of his absence, the trial court cancelled the bail & surety bonds and forfeited the same to the State vide order dated 11.01.2018 (Annexure P-3) and he alongwith co-accused was ordered to be summoned through non-bailable warrants of arrest for 23.02.2018. On 23.02.2018, non-bailable warrants of arrest qua petitioner were received back with the report that his house was found locked. Consequently, finding that presence of petitioner could not be procured through ordinary process, he was summoned through proclamation under Section 82(1) Cr.P.C., returnable by 23.04.2018 by the trial court vide order dated 23.02.2018 (Annexure P-4). The proclamation was not received back on 23.04.2018 and so was the position on 04.07.2018. On 04.07.2018, petitioner was again ordered to be summoned under Section (82)(1) Cr.P.C. for 07.08.2018. On 07.08.2018, HC Harjinder Singh appeared in the court and returned the proclamation of petitioner Avtar Singh, however, he did not sign the statement recorded in the court on oath and skipped away. The matter was adjourned for 20.08.2018 for awaiting the presence of petitioner and HC Harjinder Singh was also ordered to be summoned through non-bailable warrants for the said date. Be that as it may, proclamation was effected on 20.07.2018.

On 20.08.2018, HC Harjinder Singh appeared and signed the statement. However, petitioner Avtar Singh didn't appear. Since mandatory period of 30 days stood expired and petitioner failed to appear in court, he was declared as Proclaimed Offender in terms of Section 82(1) Cr.P.C. vide

order dated 20.08.2018 and his properties were ordered to be attached under Section (3) Cr.P.C. and consequent FIR under Section 174-A IPC was also ordered to be registered against him vide the said order.

While issuing notice of motion on 06.07.2021, the following contentions put-forth by learned counsel for the petitioner were recorded:-

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

Learned counsel for the petitioner contends that proclamation was ordered on 04.07.2018 and in compliance thereof, notice of proclamation was directed to appear before the Court on 07.08.2018. The proclamation was effected on 20.07.2018 and thereafter, 30 days clear notice was required to be given to the petitioner for appearance before the Court, but the Chief Judicial Magistrate took up the case on 07.08.2018 and further adjourned the case to await presence of the petitioner for 20.08.2018. On 20.08.2018, the petitioner was declared as proclaimed offender and FIR under Section 174-A IPC was also ordered to be registered.

Learned counsel further contends that the order declaring the petitioner as proclaimed offender is in dis-regard to the ratio of **Ashok Kumar vs. State of Haryana, 2013(4) RCR (Criminal) 550** as the petitioner was required to be given mandatory **notice** of 30 days after the date of effecting proclamation. If 07.08.2018 was the date already fixed, then the Court ought to have adjourned the case for 30 days on 07.08.2018.

Notice of motion for 16.08.2021.

Notice re: stay.”

Learned counsel State has opposed the prayer made in the petition submitting that mandatory 30 days’ period was certainly over as proclamation was effected on 20.07.2018 and the order declaring petitioner

as proclaimed offender was passed on 20.08.2018. Thus, the impugned order fully satisfies the legal proposition.

I have heard learned counsel for the parties and perused the record.

A perusal of zimni orders passed by the trial court, coupled with the proclamation notice 09.07.2018 under Section 82 Cr.P.C., reveals that due to non-appearance of petitioner on 11.01.2018, he was ordered to be summoned through non-bailable warrants but he didn't put in appearance. Finding that petitioner could not be served through ordinary process, vide order dated 23.02.2018 he was ordered to be summoned through proclamation under Section 82(1) Cr.P.C., report of which could not be procured upto 04.07.2018. Ultimately, vide order dated 04.07.2018, petitioner was again ordered to be summoned through fresh proclamation.

Annexure P-5 depicts that fresh proclamation was issued on 09.07.2018, requiring the petitioner to appear before the court on or before 07.08.2018. Proclamation notice dated 09.07.2018 stood effected on 20.07.2018 as it is clear from order dated 07.08.2018 passed by the trial court that HC Harjinder Singh had appeared before the court and returned the proclamation of petitioner Avtar Singh. Thus, it is clear that proclamation notice dated 09.07.2021 was affixed on 20.07.2018 wherein petitioner was directed to appear on or before 07.08.2018 which period was less than 30 days. The time period of 30 days was to be reckoned from the date of the execution and not from the date of issuance of proclamation i.e. 09.07.2021. Therefore, it is held that proclamation was not effected as per the provisions of Section 82 Cr.P.C.

Answering a similar question, this Court in Ashok Kumar's case (supra), while dealing with Section 82 Cr.P.C., held as under:-

“3. As per order dated 4.1.2013 passed by the learned Additional Chief Judicial Magistrate, Panipat, the case has been adjourned for 6.3.2013 for issuing of proclamation under Sections 82 and 83 Cr.P.C. against petitioner Ashok Kumar. The order dated 6.3.2013 shows that proclamation issued against Ashok Kumar received back duly executed. Statement of serving Constable was also recorded. Period of 30 days had not elapsed from the date of publication. Therefore, the case was adjourned to 13.3.2013. On that day, the petitioner was declared as proclaimed offender. The original record also shows that the statement of the serving official, namely, ASI Dilbag Singh was recorded on 6.3.2013, who stated that on 9.2.2013, he visited the place of residence of the accused along with proclamation. After reading publicly, the proclamation was affixed at conspicuous part of the house of the accused where he ordinarily resides. A copy of the proclamation was also affixed at conspicuous part of the Court house, which means that the publication was effected on 9.2.2013 for 6.3.2013, which shows that after the publication of the notice, the accused was not given the mandatory period of 30 days to appear before the Court. The mere fact that the Court adjourned it after the period of 30 days will not be treated as compliance of the provisions of Section 82 (1) Cr.P.C. where it is provided that:-

“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.

(1) xx xx xx xx
(2) xx xx xx xx”

4. In view of the above provisions of Section 82(1) Cr.P.C., it is clear that the publication was effected on 9.2.2013 and the accused was directed to appear in the Court as per that publication on 6.3.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned order on 13.3.2013, the publication has been effected as per the provisions of Section 82 Cr.P.C. There was no

order in the publication for the accused giving specified time and place to appear on 13.3.2013. Therefore, this order is not as per law and the same is set aside.”

In view of the aforesaid factual position as also in view of law laid down in Ashok Kumar’s case (supra), the instant petition is allowed and impugned order dated 20.08.2018 (Annexure P-7) passed by the trial court is hereby set aside.

**(Sant Parkash)
Judge**

November 29th, 2021
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No