

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

121-3

CRM-M-25475-2021

Date of decision: 16.07.2021

Anita Sharma

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Gursimran Singh Madaan, Advocate
for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

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

Petitioner-Anita Sharma 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 31.08.2019 passed by learned Judicial Magistrate First Class, Jalandhar in case FIR No.71 dated 10.06.2019 registered under Sections 406, 420 and 120-B of the Indian Penal Code, 1860 (for short 'the IPC'), Section 24 of the Immigration Act and Section 13 of the Punjab Travel Professionals Regulation Act, 2014 at Police Station Navi Baradari Jalandhar, whereby the petitioner was declared proclaimed person under Section 82 of the Cr.P.C., and all consequential proceedings arising therefrom.

Briefly stated the facts relevant for disposal of present petition are that the above-said FIR was registered on complaint of Gurpreet Singh. In his complaint Gurpreet Singh alleged that accused Anita Sharma (the petitioner) along with her husband Kapil Sharma, mother-in-law Pinky Sharma and Heena and their employees Rakesh

Kumar, Partap and Beeta cheated and defrauded the complainant for an amount of Rs.10,22,960/- on the pretext of sending his sister Manpreet Kaur abroad for studies.

On failure of the petitioner to appear before the Court despite publication of proclamation, the petitioner was declared proclaimed person vide order dated 31.08.2019.

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.

Notice of motion.

Pursuant to advance notice, Mr. Rana Harjasdeep Singh, DAG, Punjab has appeared and opposed the petition. However, no reply has been filed by the 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 person vide order dated 31.08.2019 in breach of the prescribed procedure. The learned Judicial Magistrate First Class, Jalandhar was well aware that the petitioner was not residing at the address given by the complainant and as such proper service was never effected on the petitioner. The petitioner was not given thirty days time for her appearance before the Court. Similar orders passed in other cases declaring her as proclaimed person have already been set aside by this Court vide orders dated 26.03.2021 passed in CRM-M-14209-2021 and CRM-M-14175-2021. Therefore, the impugned order and all consequential proceedings arising therefrom

may be quashed.

On the other hand, learned State Counsel has submitted that the petitioner absconded and was rightly declared proclaimed person vide order dated 31.08.2019 after expiry of the period of 30 days from the date of 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 31.08.2019 does not suffer from material illegality and is not liable to be quashed.

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***).

In the present case non-bailable warrant of arrest was issued against the petitioner vide order dated 04.07.2019 passed by the learned Judicial Magistrate First Class, Jalandhar for 12.07.2019 and the relevant part of the order reads as under:-

“Application for issuance of warrant of arrest of accused i.e. Kapil Sharma, Anita Sharma, Pinki Sharma and Heena have been filed stating that accused i.e. Kapil Sharma, Anita Sharma, Pinki Sharma and Heena evading their arrest. It is also stated in the application that there is no order passed by the Hon'ble High Court or any other court for stay of arrest of accused i.e. Kapil Sharma, Anita Sharma, Pinki Sharma and Heena. In this regard the statement of ASI Manohar Lal has also been recorded and Ahlmad has also reported that the arrest of accused i.e. Kapil Sharma, Anita Sharma, Pinki Sharma and Heena have not been stayed by Hon'ble High Court. It is revealed from the record that the efforts have been made to arrest accused i.e. Kapil Sharma, Anita Sharma, Pinki Sharma and Heena, arrest warrant of accused i.e. Kapil Sharma, Anita Sharma, Pinki Sharma and Heena be issued for 12.07.2019.”

On receipt of non-bailable warrant of arrest issued against the petitioner unexecuted, the learned Judicial Magistrate First Class,

Jalandhar ordered publication of proclamation against the petitioner vide order dated 12.07.2019, the relevant part of which reads as under:-

“Nonailable warrants issued against all accused i.e. Kapil Sharma, Anita Sharma, Pinki Sharma and Heena received back unexecuted, I am satisfied that all the accused i.e. Kapil Sharma, Anita Sharma, Pinki Sharma and Heena are intentionally avoiding their service and cannot be served by way of ordinary process. As such, they are ordered to be served through proclamation under section 82 Cr.P.C. for 31.08.2019.”

The execution of proclamation was entrusted to ASI Darshan Kumar who executed the proclamation on 21.07.2019 and his statement was recorded by the learned Judicial Magistrate First Class, Jalandhar in this regard.

In view of the report and statement of ASI Darshan Kumar, on non-appearance the petitioner was declared proclaimed person vide order dated 31.08.2019 passed by learned Judicial Magistrate First Class, Jalandhar and relevant part of order dated 31.08.2019 reads as under:-

“Today the case was fixed for awaiting the presence of accused Kapil Sharma, Anita Sharma and Heena. However, the said accused Kapil Sharma, Anita Sharma and Heena have not come present. The statutory period of 30 days have already been lapsed for the appearance of accused Kapil Sharma, Anita Sharma and Heena. As such, accused Kapil Sharma, Anita Sharma and Heena are declared proclaimed person.

Proceedings under Section 83 of Cr.P.C. ordered to be issued against the property of accused Kapil Sharma, Anita Sharma and Heena. Let, warrant of attachment of the property of accused Kapil Sharma, Anita Sharma and Heena be issued. SHO/IO of police station Navi Baradari pertaining to the FIR No.71/19 is directed to file list of property of accused Kapil Sharma, Anita Sharma and Heena within fifteen days from today. Then, report of attachment of property of accused Kapil Sharma, Anita Sharma and Heena are awaited till 30.11.2019.

In so far as accused Pinky Sharma is concerned, Naib Court attached to this court has informed that

accused Pinky Sharma has already been arrested and is in judicial custody. Hence, proclamation issued against Pinky Sharma is hereby canceled.”

It is evident from a bare perusal of the orders passed in the case that non-bailable warrant of arrest was issued against the petitioner by learned Judicial Magistrate First Class, Jalandhar on being satisfied that the petitioner was evading arrest. Non-bailable warrant of arrest issued against the petitioner was received back unexecuted. Learned Judicial Magistrate First Class, Jalandhar recorded his satisfaction that accused Anita Sharma was intentionally avoiding the service and could not be served by way of ordinary process and accordingly ordered service through proclamation under Section 82 of the Cr.P.C. for 12.07.2019. There is no requirement of law as to passing of orders with adoption/reproduction of language of the relevant statutory provisions and such orders cannot be annulled/set aside on the ground of absence thereof so long as the orders satisfy the requirements of such statutory provisions. Therefore, the mere fact that in order dated 12.07.2019 learned Judicial Magistrate First Class, Jalandhar did not specifically mention that the petitioner against whom the warrant had been issued by it had absconded or was concealing herself so that such warrant could not be executed is not material as the order that the petitioner was intentionally avoiding the service and could not be served by way of ordinary process by due implication meets the requirements of Section 82(1) of the Cr.P.C. The proclamation was duly published on 21.07.2019 by ASI Darshan Kumar. In his statement ASI Darshan Kumar stated that he had executed the proclamation in the area of accused and had affixed a copy at her residence and another copy on

the notice board of the Court which meets the requirements of Section 82(2) of the Cr.P.C. The very ground for issuance and publication of proclamation was that the petitioner was absconding from her known address and, therefore, the ground taken by the petitioner that the learned Judicial Magistrate First Class, Jalandhar was well aware that the petitioner was not residing at the address given by the complainant and proper service was never effected on the petitioner is devoid of any merit. The petitioner did not appear despite expiry of period of 30 days from the date of publication of the proclamation whereupon the petitioner was declared proclaimed person vide order dated 31.08.2019. In the facts and circumstances of the case, I am of the considered view that the petitioner was rightly declared as proclaimed person vide impugned order dated 31.08.2019 which does not suffer from material illegality and is not liable to be set aside.

In view of the above, the petition for quashing of impugned order dated 31.08.2019 is dismissed.

However, the petitioner is directed to surrender before the Court concerned in case FIR No.71 dated 10.06.2019 registered under Sections 406, 420 and 120-B of the IPC, Section 24 of the Immigration Act and Section 13 of the Punjab Travel Professionals Regulation Act, 2014 at Police Station Navi Baradari Jalandhar within **four weeks**, subject to order for grant of anticipatory bail, if any passed on her petition to be filed under Section 438 of the Cr.P.C. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioner shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court

in accordance with law.

Needless to observe that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall be bound to dispose of the same expeditiously and that nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

16.07.2021

(ARUN KUMAR TYAGI)
JUDGE

Vinay

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