

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-25409-2021 (O&M)
Date of Decision:-27.10.2021

Jatinder Pal Singh Shergill	Versus	... Petitioner
State of Punjab		... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Ms. Puja Chopta, Advocate for the petitioner.

Mr. Harbir Sandhu, AAG, Punjab,
assisted by ASI Gurwinder Singh.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court seeking setting aside of order dated 23.11.2020 passed by learned Judicial Magistrate 1st Class, Patiala (Annexure P-1) in FIR No.85 dated 22.5.2020 registered at Police Station Anaj Mandi, Patiala, District Patiala under Sections 302, 148, 149, 506, 201 of Indian Penal Code and Section 25 of Arms Act, whereby the petitioner has been declared a proclaimed offender.
2. At the time of issuance of notice of motion on 7.7.2021, the following order was passed:

“The petitioner assails order dated 23.11.2020 (Annexure P-1)
vide which he has been declared a ‘Proclaimed Offender’.

Learned counsel for the petitioner contends that while the proclamation was issued on 9.10.2020 (Annexure P-12) directing the petitioner to appear before the trial Court on 9.11.2020 but it was only on 23.10.2020 that the proclamation was actually effected as would be evident from the report of serving official. It has further been submitted that since as on 9.11.2020 a period of 30 days after effecting proclamation had not elapsed, the matter was adjourned by the trial Court to 23.11.2020 and on which date the petitioner was declared a 'Proclaimed Offender'.

It has been submitted that the adjournment of the trial Court would not cure the defect of not having afforded a period of less than 30 days for appearance after proclamation as Section 82 Cr.P.C. specifically provides that a period of 30 days after publication has to be provided as has also been held in Ashok Kumar Vs. State of Haryana 2013(4) R.C.R. (Criminal) 550.

Notice of motion for 27.10.2021.

Meanwhile operation of the impugned order shall remain stayed.”

3. The State has filed its reply, which is taken on record. Para No.6 of the reply reads as follows:

“6. That constable Vikramjeet Singh got recorded his statement before the Ld. Illaqa Magistrate on 09.11.2020 to the effect that he affixed the proclamation on 23.10.2020 at the main gate of houses of accused, public places, notice board of the court.....”

4. A perusal of the proclamation notice shows that the accused was required to appear on 9.11.2020. However, it was on 23.10.2020 that the proclamation was actually effected as is evident from the reply filed by State. In other

words, as on the date when the proclamation was effected i.e. on 23.10.2020, the accused was afforded only 16 days to cause his appearance.

5. Section 82(1) Cr.P.C. mandates that a period of not less than 30 days has to be provided for causing appearance from the date of publication of such proclamation. This Court in Ashok Kumar Vs. State of Haryana 2013(4) R.C.R. (Criminal) 550 while interpreting the provisions of Section 82(1) has held that a clear period of 30 days is required to be furnished to the accused and that even in case the Court subsequently adjourned the matter such adjournment beyond 30 days cannot be treated as compliance of provisions of Section 82(1) Cr.P.C. The relevant extract from the cited judgment reads as follows:-

“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.”

6. In view of the aforestated factual position, wherein a period of only 16 days was afforded for causing appearance after the proclamation was effected and in light of ratio of Ashok Kumar's case (supra), the petition is accepted and the impugned order dated 23.11.2020 passed by learned Judicial Magistrate 1st Class, Patiala (Annexure P-1) is hereby set aside.
7. The petition stands disposed off accordingly.

27.10.2021

pankaj

Whether speaking /reasoned

Whether Reportable

Yes / No

Yes / No

**(Gurvinder Singh Gill)
Judge**