

CRM-M-31481-2021

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

CRM-M-31481-2021

Date of decision:29.09.2021

Uttam Sharma

...Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Vivek K. Thakur, Advocate for the petitioner.

Mr. H.S. Sitta, AAG, Punjab.

Mr. Alok Mittal, Advocate for respondent No.2.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

Though through this petition, the petitioner seeks quashing of FIR No.19 dated 12.02.2019 registered under Sections 420, 406 and 120-B IPC at Police Station City Kapurthala, District Kapurthala, Punjab (Annexure P-1) along with all consequential proceedings arising therefrom as well as order dated 04.11.2019 passed by Chief Judicial Magistrate, Kapurthala (Annexure P-7), whereby the petitioner was declared as proclaimed person, yet as noticed in the order dated 24.08.2021 passed by this Court, the counsel for the petitioner has confined the prayer of the petitioner to the challenge of the proclamation order only.

Learned counsel for the petitioner submits that the petitioner was declared as a proclaimed person by the learned trial Court on 04.11.2019 without complying with the mandatory provisions contained in Section 82 Cr.P.C. It is further submitted that the proclamation was issued against the petitioner vide order dated 22.07.2019 passed by the trial Court, for 20.08.2019. On 20.08.2019, it was recorded that serving Constable did not turn up and the case was adjourned to 18.09.2019, on which date, his

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statement was recorded and as per the statement of the serving constable, the proclamation was pasted at the place of the petitioner on 09.08.2019. The file was taken up on 20.09.2019. Thus, a clear period of 30 days from the date of execution of the proclamation, was not granted to the petitioner to cause his appearance before the trial Court and hence, the impugned order is bad in law. Reliance in this regard is placed upon the judgment of a Coordinate Bench of this Court, in Ashok Kumar vs State of Haryana, 2013 (4) RCR (Criminal) 550 and another judgment of this Court in CRM-M-3401-2020 titled 'Kuldeep Singh @ Fauji Vs. State of Punjab and another', decided on 26.02.2021.

Learned State counsel as well as the learned counsel for the complainant submit that the petitioner had been intentionally avoiding his presence before the trial Court and, thus, no fault could be found with the impugned order passed by the trial Court.

I have heard learned counsel for the parties.

As per the statutory provisions contained in Section 82 Cr.P.C., a clear 30 days' time from the date of publication of the proclamation is to be afforded to a person absconding the warrant issued by the Court, to cause his appearance before the Court. Subsequent adjournment of the case in order to make the period as 30 days, would not cure the defect.

In view of the above, the impugned order dated 04.11.2019 passed by Chief Judicial Magistrate, Kapurthala, whereby the petitioner was declared as proclaimed person, is quashed. Needless to say, the petitioner shall continue appearing before the trial Court.

Disposed of accordingly.

(HARNARESH SINGH GILL)
JUDGE

29.09.2021
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Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No