

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

Crl. Misc. M 36474-2020 (O&M)
Date of Decision: 26.10.2021

Harjinder Singh @ Harjinder Kumar

...Petitioner

Versus

State of Punjab

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Bhupinder Banga, Advocate
for the petitioner.

Ms. Rashmi Attri, AAG Punjab.

JAISHREE THAKUR, J. (Oral)

**CRM-7286-2021 &
CRM-7324-2021**

Allowed as prayed for.

Annexure P-8 is taken on record, subject to all just exceptions.

CRM-M-26474-2020

1. The instant petition has been filed seeking to set aside order dated 25.04.2016 passed by the Judicial Magistrate Ist Class, Hoshiarpur in the case titled as “State vs. Harjinder Kumar” arising out of FIR No.50 dated 19.05.2015, registered under Section 376 of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences (POCSO) Act at Police Station Mehtiana, District Hoshiarpur.

2. In brief, the facts of the case are that the aforesaid FIR came to

be registered against the petitioner herein on 19.05.2015 on the allegations that the petitioner herein, who is uncle of the victim (i.e. daughter of the complainant) took the victim to a room and put his finger in her private part. In the said FIR, the petitioner came to be declared as proclaimed offender on 25.04.2016, which order is under challenge in the instant petition.

3. Learned counsel for the petitioner argues that the petitioner was not in India when the instant FIR was registered against him and subsequently, he was declared as proclaimed offender by the impugned order. It is contended that provisions of Section 82 of the Code of Criminal Procedure have not been complied with in the present case, as the petitioner was not given mandatory period of 30 days to appear before the court, as such, the impugned order is liable to be set aside. In his regard, learned counsel for the petitioner relies upon judgment rendered by this court in ***Ashok Kumar vs. State of Haryana, 2013(4) RCR (Criminal) 550.***

4. Per contra, learned counsel appearing on behalf of the respondent-State, opposes the instant petition, while contending that the petitioner was well aware about the proceedings pending against him, as such, the instant petition is liable to be dismissed.

5. I have heard learned counsel for the parties and have also gone through the pleadings of the case.

6. As per the status report filed by the respondent-State dated 30.11.2020, passport No.H6397322(2) dated 06.10.2009 valid upto 05.10.2019 was issued from mission abroad to the petitioner herein against his old passport No.B-0286670(1) dated 06.07.1999 and the petitioner got re-issued passport No.T-4991403(3) dated 19.08.2019 valid upto

18.08.2029 from mission abroad against his old passport, as stated above.

Further, the instant FIR came to be registered on 19.05.2015 whereas, as per his passport (Annexure P-4) available on record, the petitioner left for Kingdom of Bahram on 08.05.2015.

Section 82 of Cr.P.C. 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***

xxx xxx xxx ”

7. Order dated 16.03.2016 passed by JMIC, Hoshiarpur is available on record as Annexure P-7, whereby, proclamation was issued against the petitioner for 25.03.2016 i.e. *for a period of less than thirty days to appear before the court.* As per order dated 16.03.2016 passed by JMIC, Hoshiarpur, after recording the statement of the serving constable, the matter was adjourned to 25.04.2016 for awaiting the presence of the petitioner herein, as the statutory period of 30 days had not expired on that date. Thereafter, by the impugned order dated 25.04.2016 the petitioner herein had been declared as proclaimed offender.

8. In this regard, law is well settled that if a proclamation is to be issued to declare an accused as proclaimed offender under Section 82 of the Code of Criminal Procedure, such accused should be given mandatory period of 30 days to appear before the court, and if that is not done by the court, proclamation order so issued by the court is not as per law and the

same is liable to be set aside. In this regard, reliance is placed upon judgment rendered by this Court in *Ashok Kumar's case (supra)*.

9. First of all, as discussed above, the petitioner was not in India when the instant FIR came to be registered against him. Secondly, as per order dated 16.03.2016 passed by the JMIC, Hoshiarpur whereby, proclamation was issued against the petitioner for 25.03.2016 i.e. *for a period less than 30 days, is not in compliance of mandatory provisions of Section 82 Cr.P.C.*, as such, the same is liable to be set aside.

10. In view of the above, the instant petition is hereby allowed. The impugned order dated 25.04.2016 passed by the learned Judicial Magistrate 1st Class, Hoshiarpur and all the consequential proceedings are set aside.

(JAISHREE THAKUR)
JUDGE

26.10.2021
prem

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No