

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

(Heard through VC)

CRM-M-46015 of 2021 (O&M)
Date of Decision: November 02, 2021

Jaspreet alias Beeru

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. L.S. Mann, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

The instant petition has been filed seeking to set aside order dated 19.08.2020 passed by the learned Civil Judge (Junior Division), Phillaur in FIR No.73 dated 12.10.2018, registered under Sections 363, 366-A of Indian Penal Code at Police Station Nurmehal, District Jalandhar Rural vide which the petitioner herein has been declared as proclaimed offender.

Counsel for the petitioner herein would contend that the petitioner has been declared as proclaimed offender without waiting for the statutory period of 30 days to lapse. He would submit that the proclamation was effected against the petitioner on 19.07.2020, on which date a copy of the proclamation was pasted on his house, a copy at public place and a copy at notice board of the court for appearance on 23.07.2020 and therefore,

there is non-compliance of Section 82 Cr.P.C. 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* to contend that the impugned order dated 19.08.2020 is not sustainable, as mandatory period of 30 days was to be given for putting appearance and merely because the case stood adjourned for a period of 30 days, it cannot be said to be a compliance of Section 82 Cr.P.C.

Notice of motion to the official respondent No.1-State only.

At this stage, Mr. A.S Gill, Sr. DAG Punjab, who is appearing through the medium of video conferencing, accepts notice on behalf of respondent No.1-State. He would contend that the petitioner herein has been declared as proclaimed offender as he did not put in an appearance before the court on 19.08.2020.

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

In brief, the facts of the case are that the petitioner herein along with Kirandeep Kaur, daughter of the complainant, approached this Court under Article 226 of the Constitution of India seeking a direction to the official respondents to protect their life and liberty as they have solemnized a marriage, at the hands of respondents No.4 to 11 therein, who are none other than the family members of Kirandeep Kaur wife of the petitioner and arrayed as respondents. By an order dated 09.10.2020 passed in CRWP No.8229 of 2020, the SSP, Jalandhar (Rural) was directed to look into the representation of the petitioners and to take appropriate steps to ensure that no harm is caused to the petitioners.

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 ”*

It appears that the proceedings under the said FIR were continuing and the Judicial Magistrate Ist Class issued warrants of arrest to secure presence of the petitioner for 23.06.2020 as the non-bailable warrants of the accused were received back unexecuted. The court below came to the opinion that the petitioner be summoned through proclamation under Sections 82/83 Cr.P.C. for 23.07.2020. On 23.07.2020, the court came to record the statement of SI Mahinder Pal, who stated that he had affixed one copy of the proclamation on the door of the house of the petitioner, one copy on the public place and also affixed one copy of the proclamation on the notice board of the court on 19.07.2020 for appearance of the petitioner on 23.07.2020. On 23.07.2020, the case was adjourned to 19.08.2020 for awaiting the appearance of the accused, since statutory period of 30 days had not lapsed.

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 Cr.P.C., such accused should be given mandatory period of 30 days to

appear before the court, 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 vs. State of Haryana (supra)*.

In view of the above, the impugned order dated 19.08.2020 is hereby set aside with all consequential proceedings. However, the petitioner herein is directed to put in an appearance before the trial court within a period of 15 days from today and move an application for regular bail. On his doing so, the petitioner be admitted to regular bail by the trial court to its satisfaction.

The petition in hand stands allowed with the aforesaid directions.

November 02, 2021
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No