

Narvail Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Ms. Roja Agnihotri, Advocate,
for the petitioner.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

Mr. Naveen Kaushik, Advocate
for respondent no.2

AMOL RATTAN SINGH, J. (Oral)

By this petition, the petitioner seeks quashing of the impugned order dated 16.10.2018 (Annexure P-9), passed by the learned JMIC, Patiala, vide which he has been declared to be a proclaimed offender.

Case heard by video conferencing.

On 25.02.2021, the following order had been passed:

“Case heard via video conferencing.

CRM-5444 of 2021

By this application, respondent no.2 wishes to place on record a reply by way of his affidavit.

Notice in the application.

Ms.Roja Agnihotri, Advocate, accepts notice on behalf of the non-applicant-petitioner.

The application is allowed, with the reply of respondent no.2 ordered to be taken on record.

CRM-M-42108 of 2020

Learned counsel for the petitioner first points to Annexure P-6, which is seen to be an order of proclamation issued on 18.9.2018 by the learned JMIC, Patiala, with the last part reading as follows:-

“Proclamation is hereby made that the said Narvail Singh, age -0 is required to appear at criminal courts, Patiala, before Judicial Magistrate Ist Class-11 to answer the said complaint on the day of 16.10.2018.”

(Prior to that, the order gives the context of the proclamation, i.e. the criminal complaint filed under the provisions of Section 138 of the Negotiable Instruments Act, 1881, and the fact that the warrants issued for the arrest of the petitioner had been returned (unexecuted) and therefore it was observed by the court that he was concealing himself deliberately to avoid service of the warrant.

She next points to the impugned order, Annexure P-9, dated 16.10.2018, to submit that very obviously the petitioner has been declared to be a proclaimed person in 28 days, i.e. less than the mandatory 30 days from the date of proclamation, as stipulated in Section 82 of the Cr.P.C..

She further points to Annexure P-8 by which the serving official has stated that he had made the proclamation on 15.9.2018, i.e. prior to the issue of process under Section 82 of the Cr.P.C. on 18.9.2018.

Per contra, Mr.Kaushik, learned counsel for respondent no.2 (complainant) points to Annexure P-5 with the petition, which is an order passed on 11.9.2018 by the learned JMIC, stating to the following effect:-

“File put up before me being Duty Magistrate as learned Presiding Officer is on leave today. Proclamation not issued against the accused. Let fresh proceedings u/s 82 Cr.P.C. be initiated against accused as per previous order for 16.10.2018.”

Mr.Kaushik therefore submits that the proclamation actually having been ordered to be issued on 11.9.2018 and the petitioner having been declared to be a proclaimed person on 16.10.2018, it was obviously beyond the statutory period of 30 days prescribed in Section 82 and therefore the petition deserves to be dismissed also looking at the petitioners' antecedents where he been declared to be a proclaimed person/offender in a large number of cases (as contended).

It is to be noticed by this court that the form of proclamation under Section 82 has been prescribed in Form IV appended with the Code of Criminal Procedure, 1973, which proclamation is actually seen to be issued on 18.9.2018.

Consequently, learned counsel for respondent no.2 would address arguments on the basis of any law that he wishes to cite that process would be deemed to have been issued on 11.9.2018 and not on 18.9.2018 and therefore the impugned order is valid as has been contended by him.

On his request, adjourned to 17.3.2021.

Interim order to continue.”

Today learned counsel for respondent no.2 submits that other than a judgment of a co-ordinate Bench of the Andhra Pradesh High Court, holding that the period of 30 days stipulated in Section 82 of the Cr.P.C. is only directory and not mandatory, the law as settled by this court at least is admittedly to the effect that the 30 day period is a mandatory period.

That being a statement very fairly made and which is obviously correct, this petition is allowed, with the impugned order hereby set aside.

However, it is made absolutely clear that with the petitioner obviously evading his presence before the trial court where he is an accused in a complainant filed under the provisions of Section 138 of the Negotiable Instruments Act, 1881, even while invoking jurisdiction under Section 482 of the Cr.P.C. in the petition, it is directed that if he remains absent without the permission of the trial court on any occasion, that court would order issuance of non-bailable warrants immediately to secure his presence before it.

He would, consequently, now appear before the trial court on 19.03.2021, i.e. the next date stated to have been fixed by that court (as per learned counsel for respondent no.2).

March 17, 2021

dharamvir/

**(AMOL RATTAN SINGH)
JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable: : Yes/No