

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

208

**CRM-M-42896-2019(O&M)
Decided on : 05.03.2021**

NAVEEN KUMAR

... Petitioner(s)

Versus

STATE OF HARYANA

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL
(Through video conferencing)

PRESENT: Mr. Vishal Garg Narwana, Advocate
for the petitioner.
Mr. Rajiv Goel, DAG Haryana.
Mr. Mahavir Singh, Advocate
for the complainant.

MANJARI NEHRU KAUL, J. (Oral)

The instant petition has been preferred under Section 482 Cr.P.C., for setting aside proclamation order dated 02.08.2018 (Annexure P-2) and order dated 01.10.2018 (Annexure P-3) in FIR No.749 dated 14.11.2016 under Sections 66, 66C, 66E and 67 of the Information and Technology Act, 2000, registered at Police Station Civil Line, District Gurgaon.

2. Learned counsel for the petitioner contends that the impugned proclamation orders dated 02.08.2018 and 01.10.2018 (Annexures P-2 and P-3 respectively) were passed in contravention of provisions of Section 82(1). Learned counsel submits that the petitioner was asked to appear before the Court on 29th August 2018 vide order dated 02.08.2018 (Annexure P-2), which was within 27 days and not 30 days' period as provided for under Section 82(1) Cr.P.C.

3. Learned counsel has also invited the attention of this Court to order dated 01.10.2018 (Annexure P-3) wherein the accused was declared proclaimed person by observing that the petitioner had failed to appear even after the elapse of 30 days of proclamation under Section 82 Cr.P.C.

4. Reply by way of affidavit of Rajender Singh, HPS, Assistant

Commissioner of Police, City Gurugram has been filed by the State. A perusal of the reply so filed simply states that provisions of Section 82 Cr.P.C., have been complied with by the Court below before declaring the petitioner as proclaimed person. However, on a pointed query put to the learned State counsel as to whether 30 days mandatory period as provided for under Section 82(1) Cr.P.C., would have been completed from 02.08.2018 to 29.08.2018, he fairly admitted that it was short by 03 days.

5. It has also been urged by the counsel for the petitioner that the mandatory provisions of Section 82(2) Cr.P.C., were given go-by and proclamation was not published publicly as provided under Section 82(2)(i)(a) of the Cr.P.C.,

6. Learned counsel has further invited the attention of the Court to the statement of EASI Surender (Annexure P-4) wherein he had stated that on going to the house of the petitioner at the given address, he was not found there and on inquiry it was revealed to him that the accused petitioner had not been residing there for the last about 2-3 years. It was further submitted that in the circumstances, the petitioner could not have been possibly aware about the proclamation and more so when it was not even made public as provided for under Section 82(2)(i)(a) Cr.P.C.

7. Learned counsel for the complainant has opposed the prayer made by learned counsel for the petitioner by urging that there are serious allegations levelled against the petitioner. He has further contended that the petitioner has an alternate remedy of impugning the orders of proclamation under Section 397 Cr.P.C., before the Court of Sessions. He has submitted that on the date of declaring the petitioner proclaimed offender, period of 30 days had indeed been completed.

8. Heard.

9. It cannot be disputed that the petitioner was ordered to be summoned vide order dated 02.08.2018 in FIR No.749 dated 14.11.2016 under Sections 66, 66C, 66E and 67 of the Information and Technology Act, 2000 and was asked to appear before the Court on 29.08.2018.

10 No doubt in the instant case, the order declaring the petitioner as proclaimed person was passed much after the expiry of 30 days as provided for in Section 82(1) of the Cr.P.C., as the matter thereafter had been adjourned. However, an adjournment would not in any way cure the defect on account of shortfall of 03 days in the period of 30 days between the publication and the date fixed for appearance of accused, as per the proclamation notice.

11. It is settled law that a minimum period of 30 days is required to be furnished to the accused and even if the matter is adjourned subsequently, such adjournment beyond 30 days would not be treated as compliance of provisions of Section 82(1) Cr.P.C.

12. As a sequel to the above, this Court has no hesitation in setting aside the impugned orders of proclamation dated 02.08.20218 and 01.10.2018. Accordingly, the petition is allowed. The petitioner is directed to appear before the trial Court on or before 15.03.2021. On his appearance, he may, if so advised, move an application seeking grant of bail. In case, the petitioner appears before the trial Court within the stipulated period and moves an application for grant of bail, the trial Court shall dispose of the same expeditiously preferably within 01 week of such application.

(MANJARI NEHRU KAUL)
JUDGE

March 05, 2021

S.Sharma(syr)

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No