

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(through video conferencing)**

CRM-M-4496-2022
Decided on : 04.02.2022

Monu Rani @ Rajni

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Arav Gupta, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Instant petition has been filed under Section 482 Cr.PC for quashing of the order dated 20.01.2022 (Annexure P-11) passed by JMIC, Fatehabad in case FIR No.62 dated 25.08.2021 under Sections 498-A/34 IPC (Sections 406/506 IPC added later on) vide which the trial Court issued fresh proclamation against accused-respondent No.2 despite the fact that first proclamation had been duly executed under Section 82 Cr.PC.

Learned counsel for the petitioner submits that the learned trial Court while passing the impugned order gravely erred and acted contrary to the provisions contained in Section 82 Cr.PC by issuing fresh proclamation against respondent No.2 for 09.03.2022. He further submits that although the proclamation issued by the Court below vide order dated 02.12.2021 stood duly effected upon the accused-respondent No.2, as was evident from the order dated 11.01.2021, however, respondent No.2 intentionally absented and did not put in appearance before the trial Court on the date fixed i.e. 20.01.2022. He thus, submits that since the absence of respondent

No.2 was intentional before the trial Court on 20.01.2022, he ought to have been proceeded against under Section 82(4) Cr.PC and declared a proclaimed offender, which the trial Court erroneously failed to do.

Heard learned counsel and perused the material available on record.

It would be apposite to reproduce the relevant provisions of Section 82 Cr.PC, which is 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.*
- (2) The proclamation shall be published as follows:-*
 - (i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;*
 - (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;*
 - (c) a copy thereof shall be affixed to some conspicuous part of the Court- house;*
 - (ii) the Court may also, if it thinks fit, direct a*

copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

[(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of Indian Penal Code, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.]”

A perusal of sub-section (4) of Section 82 Cr.PC, no doubt, provides that in case a person against whom proclamation has been issued, fails to appear before the Court, which issued the proclamation, then, such Court '**may**' declare such person a Proclaimed Offender. However, it needs to be noticed that the term used therein is '**may**' and not '**shall**'. The term 'may' has to be distinguished from the term 'shall'. '**May**' implies some degree of discretion whereas '**shall**' would indicate that it is more of an imperative command and thus, is mandatory in the nature.

Adverting to the case in hand, and in the wake of the term 'may' which has been used in Section 82(4) Cr.PC, the impugned order does not deserve any interference by this Court. A perusal of the impugned order reveals that the Court below while passing the order issued fresh proclamation for 09.03.2022 after duly considering the conditions prevailing on account of the outbreak of third wave of the pandemic as a result of which the Courts at Fatehabad were functioning in a virtual/restricted mode. In addition, there was also an administrative order vide endorsement No.148-45 dated 12.01.2022 passed by the District and Sessions Judge qua the restricted hearing of the Courts, which was to remain in effect from 13.01.2022 to 20.01.2022. Hence, the Court below rightly exercised its discretion, which stood vested in him under Section 82(4) Cr.PC.

The petition being devoid of any merit is accordingly dismissed.

(MANJARI NEHRU KAUL)
JUDGE

04.02.2022

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Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No