

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

CRM-M-9052-2022 (O&M)
Date of Decision:- 16.3.2022

Jimmy Mann and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Arshdeep S. Sivia, Advocate for
Mr. Jasdev Singh Brar, Advocate for the petitioners.

Mr. Anmol S. Sandhu, AAG, Punjab.

Mr. Gunninder Singh Dhillon, Advocate for
Mr. Sartej Singh Narula, Advocate for respondent No. 2.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

CRM-9100-2022

The miscellaneous application is allowed as prayed for and short reply alongwith its annexures (Annexure P-2/1 to R2/6) are permitted to be taken on record.

CRM-9098-2022

The amended memo of parties annexed with the application is permitted to be taken on record.

The miscellaneous applications stand disposed of accordingly.

Main case

1. The petitioners have approached this Court challenging order dated 7.1.2020 (Annexure P-1) passed by the Chief Judicial Magistrate (NRI Cases) Jalandhar wherein the petitioners have been declared as proclaimed offenders in respect of FIR No.5 dated 21.4.2018 under Sections 420/120-B IPC (Sections 465, 467, 468, 471 IPC added lateron) at Police Station NRI, District Commissionerate, Jalandhar.
2. The learned counsel for the petitioners has submitted that the trial Court did not adopt the mandatory procedure as prescribed under provisions of Section 82 Cr.P.C. and that a clear period of 30 days for causing appearance on the nominated date (as per proclamation notice), from the date publication was actually effected, was not afforded to the petitioners. The learned counsel has submitted that while the learned Chief Judicial Magistrate, Jalandhar had ordered for issuance of proclamation vide order dated 1.11.2019, but the date recorded therein for causing appearance was fixed as 25.11.2019 which itself is a period of less than 30 days. The learned counsel has drawn the attention of this Court to order dated 1.11.2019, as reproduced, which is part of Annexure P-5 and which reads as follows :-

“Present : APP for the State

Non-bailable warrants for accused Jimmy Maan, Hadly Mann, Himmat Singh, Narinder Pal Kanda, Jarnail Singh and Dheera Singh received back unexecuted. In view of the report made on the warrants, this court is of opinion that accused have either absconded or have intentionally concealed themselves to avoid execution of

warrants. As such, accused are ordered to be served through proclamation u/s 82 Cr.PC for 25.11.2019.

Sd/-
(Amita Singh), PCS
Chief Judicial Magistrate
(NRI Cases), Jalandhar
UID No. PB0225”

3. The learned counsel has also referred to order dated 25.11.2019 passed by learned Chief Judicial Magistrate, Jalandhar, which reads as under :-

“Present : APP for the State

Proclamation issued for accused Jimmy Maan, Hadly Mann, Himmat Singh, Narinder Pal Kanda, Jarnail Singh and Dheera Singh received back effected. Statement of serving official has been recorded. Period of 30 days has not elapsed since the making of proclamation. So, presence of accused be awaited till 07.01.2020.

Sd/-
(Amita Singh), PCS
Chief Judicial Magistrate
(NRI Cases), Jalandhar
UID No. PB0225”

4. It was thereafter that the petitioners were declared as proclaimed offenders vide impugned order dated 7.1.2020 (Annexure P-1).
5. Notice of motion was issued to State. The State counsel as well as the learned counsel representing the complainant have vehemently opposed the petition and have submitted that the petitioners had not approached the Court with clean hands and had incorrectly stated that they were not residing at the given address. The learned counsel representing the complainant has also submitted that it is a case where other co-accused had also been

declared as proclaimed offender and there is a tendency on part of all the accused to flee from justice dis-entitling them from grant of any relief.

6. I have considered rival submissions addressed before this Court.
7. The respondents have not been able to dispute the position that it is a case where a period of less than 30 days was afforded for causing appearance of the accused, as per the proclamation notice issued on 1.11.2019. On 25.11.2019, the learned Chief Judicial Magistrate, Jalandhar, upon finding that proclamation had been effected but the requisite period of 30 days had not been afforded chose to further adjourn the matter. However, it has been held repeatedly by this Court that such like adjournment would not cure the defect of having afforded inadequate period. A reference in this context is made to Ashok Kumar Vs. State of Haryana 2013(4) R.C.R. (Criminal) 550 wherein this Court while interpreting the provisions of Section 82(1) has held that a clear period of 30 days is required to be furnished to the accused and that even in case the Court subsequently adjourned the matter such adjournment beyond 30 days cannot be treated as compliance of provisions of Section 82(1) Cr.P.C. The relevant extract from the cited judgment reads as follows:-

“4. In view of the above provisions of Section 82(1) Cr.P.C., it is clear that the publication was effected on 9.2.2013 and the accused was directed to appear in the Court as per that publication on 6.3.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned order on 13.3.2013, the publication has been effected as per the provisions of Section 82 Cr.P.C.. There was no order in the publication for the accused giving specified time and

place to appear on 13.3.2013. Therefore, this order is not as per law and the same is set aside.”

8. Still further, the co-accused Manjeet Kaur and Harjot Kaur, who had also been declared proclaimed offenders had approached this Court for setting aside the said order declaring them proclaimed offenders by way of filing CRM-M-11190-2021, which was accepted by this Court vide order dated 24.3.2021 (Annexure P-10) and the impugned orders declaring them proclaimed offenders were set aside.
9. In view of the aforestated discussion, this Court is of the opinion that the impugned order having been passed without complying with the provisions of Section 82 Cr.P.C. cannot sustain and deserves to be set aside.
10. The petition, as such, is accepted and the impugned order dated 7.1.2020 is hereby set aside.

16.3.2022

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(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No