

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.241

Case No. : CRM-M-8721-2019

Date of Decision : December 12, 2022

Jagjit Singh @ Jaggi

.... Petitioner

VS.

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Ravi Kamal Gupta, Advocate
for the petitioner.

Mr. G. S. Shergill, AAG, Punjab.

* * *

GURBIR SINGH, J. :

This is a petition under Section 482 Cr.P.C. for quashing the order dated 09.02.2018 (Annexure P-8), whereby the petitioner has been ordered to be declared absconder and all subsequent proceedings initiated under Section 174-A IPC.

Learned counsel for the petitioner states that vide order dated 09.02.2018 passed by learned Sub Divisional Judicial Magistrate (SDJM), Nabha (Annexure P-8), the petitioner was declared absconder. It was further ordered therein that intimation be sent to the concerned SHO so as to enable him to initiate proceedings under Section 174-A IPC.

Learned counsel for the petitioner further submits that the proclamation was issued on 22.05.2017 and the petitioner was required to

appear before the SDJM, Nabha on 13.06.2017. The proclamation was marked to the concerned Police Post on 02.06.2017 (Annexure P-7), whereby direction was given to the petitioner to appear before the Court on 13.06.2017. Statement of serving Constable was recorded on 05.09.2017 that he made compliance on 12.06.2017. It was stated that one copy of notice was pasted on the wall of house of accused and the other copy of notice was pasted on a conspicuous place on the turning of street of the mohalla, whereas, in fact, no such order was pasted on the wall of the house or conspicuous place. The petitioner applied for anticipatory bail. He was granted interim bail. He is regularly appearing before the Court. Challan was presented on 08.05.2018 (Annexure P-11).

Learned State Counsel has opposed the prayer made by learned counsel for the petitioner in view of provisions laid down under Section 82 Cr.P.C., which reads as under :-

Section 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 specific 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 home-stead 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 section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860) 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.

(5) The provisions of Sub-Sections (2) and (3) shall apply to a declaration made by the Court under Sub-Section (4) as they apply to the proclamation published under Sub-Section (1).”

As per Section 82(1) Cr.P.C., a Court is required to publish a written proclamation requiring the person concerned to appear at a specific place and at a specified time, not less than thirty days from the date of publishing such proclamation.

In the present case, the order of proclamation is dated 22.05.2017. The proclamation was marked to the SHO concerned on 02.06.2017 (Annexure P-7), requiring the petitioner to appear before the Court on 13.06.2017. The publication was effected on 12.06.2017. Neither proclamation was publicly read in some conspicuous place of Amargarh nor 30 days' period was given to the petitioner to appear in the Court. The order dated 09.02.2018, whereby the petitioner was declared absconder, is therefore, against the provisions of Section 82 Cr.P.C. Since the said order is against the statutory provisions, the same is hereby set aside.

Before parting with the order, it is directed that learned Courts of Judicial Magistrates are required to take the provisions of Section 82 Cr.P.C. in its true letter and spirit. It is advised that whenever a proclamation is issued, then two dates be given in the order i.e. first date should be within 15-20 days giving the direction to the serving official to complete the process of proclamation and to return the proclamation well in time and to appear in the Court for making statement about publication of

proclamation. The second date should be fixed after 30 days thereof directing the accused to appear at a specific place and on the specified date and time, so that there is no violation of the provisions of Section 82 Cr.P.C.

December 12 , 2022
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.