

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

**CRM-M-10116-2020
Date of Decision: 19.12.2022**

Yogesh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Rahul Singh, Advocate for
Mr. Ankur Lal, Advocate
for the petitioner.

Mr. N.S. Panwar, DAG, Haryana.

HARSH BUNGER J. (ORAL)

The petitioner has filed the instant petition under Section 482 of the Code of Criminal Procedure for quashing of impugned order dated 06.03.2017 (Annexure P-1), vide which, he has been declared as a proclaimed person and impugned order dated 05.11.2016 (Annexure P-2), whereby proclamation was issued against him, passed by the Judicial Magistrate Ist Class, Narnaul, in case bearing FIR No.305 dated 16.11.2015, under Sections 120-B, 148, 149, 201, 216, 302, 411, 449, 452 & 506 IPC and Section 25 of the Arms Act, registered at Police Station Nangal Chaudhary, District Mahendergarh, along with all the consequential proceedings arising therefrom, stating *inter alia* that the same are arbitrary and illegal in the eyes of law.

Learned counsel for the petitioner submits that the petitioner

has wrongly been declared as a proclaimed person in this case and that too

without complying with the provisions contained under Section 82 of the Code of Criminal Procedure. It is submitted that the petitioner was neither named in the present FIR No.305 dated 16.11.2015 nor ever been called by the police through any notice or summons. It is further submitted that the petitioner was not even aware of the fact that he has been linked to the present case or warrants of arrest have been ordered to be issued against him by the trial Court. Learned counsel further submits that on 05.11.2016, the trial Court issued proclamation requiring presence of the petitioner before the Court, but the same is absolutely illegal as the petitioner has never been served any summon or bailable/non-bailable warrants and even as per report dated 10.11.2016 (Annexure P-3), the proclamation was pasted on the house of petitioner as well as a common place in village on 10.11.2016, requiring presence of the petitioner before the trial Court on 02.12.2016, which is against the provisions contained in Section 82 of the Cr.P.C., according to which, a clear minimum period of 30 days is given to the absconding person to appear before the Court.

Learned State counsel has opposed the petition by submitting that the petitioner has rightly been declared as a proclaimed person as he had failed to appear before the trial Court and accordingly he prays for dismissal of the instant petition.

I have heard learned counsel for the parties and perused the paper book with their able assistance.

Before considering the submission made by the respective counsel, it would be appropriate to refer to Section 82 of the Code of Criminal Procedure, which reads 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.”

A perusal of above extracted Section 82 of Cr.P.C. would manifest that 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."

Still further as per Section 82(3), the concerned Court is required to record a statement in writing to the effect that the proclamation was duly published on a specified day in the manner as specified in Clause (i) of Sub-Section 2 and the same shall be taken as conclusive evidence that requirements of Section 82 have been complied with and that the proclamation was published on such day.

In the instant case, the serving officer made the following service report :-

"It is submitted that for the execution of proclamation, I reached at the given address. Accused Yogesh S/o Dharambir, caste Gurjar, resident of village Mujeri, District Faridabad was not present at the house, therefore, a copy of the proclamation was pasted on the house of the accused and one copy was pasted at a common place in the village and one copy has been pasted on the notice board outside the Ld. Court and one copy is submitted along with the report."

A perusal of the above-said report would clearly indicate that the provisions contained in Section 82(2)(i) of the Cr.P.C. have not been complied with inasmuch as that one copy of the proclamation notice was pasted on the house of the accused; one copy was affixed at common place

in the village and one copy was affixed on the notice board of the Court. However, the said proclamation was not read publicly in some conspicuous place of town or village in which the accused ordinarily resides. It is well settled that all provisions of Section 82(2)(i) of the Cr.P.C are to be mandatorily complied with cumulatively and not alternatively and non-compliance of even one provision would render the proclamation as bad. Thus, the endeavor of the serving officer to serve the proclamation notice upon the accused is deficient and cannot be sustained.

Further, vide order dated 05.11.2016 (Annexure P-2) proclamation was directed to be made; whereby Yogesh s/o Dharambir (petitioner herein) was required to appear before the Court on 02.12.2016 and publication was effected on 10.11.2016. It is thus apparent that 30 days clear notice to appear was not given. In Ashok Kumar V/s State of Haryana 2013(4) RCR (Criminal) 550, it has been held as under:-

3. As per order dated 4.1.2013 passed by the learned Additional Chief Judicial Magistrate, Panipat, the case has been adjourned for 6.3.2013 for issuing of proclamation under Sections 82 and 83 Cr.P.C. against petitioner Ashok Kumar. The order dated 6.3.2013 shows that proclamation issued against Ashok Kumar received back duly executed. Statement of serving Constable was also recorded. Period of 30 days had not elapsed from the date of publication. Therefore, the case was adjourned to 13.3.2013. On that day, the petitioner was declared as proclaimed offender. The original record also shows that the statement of the serving official, namely, ASI Dilbag Singh was recorded on 6.3.2013, who stated that on 9.2.2013, he visited the place of residence of the accused along with proclamation. After reading publicly, the proclamation was affixed at conspicuous part of the house of the accused where he ordinarily resides. A copy of the proclamation was also affixed at conspicuous part of the Court house, which means that the publication was effected on 9.2.2013 for 6.3.2013, which shows that after the

publication of the notice, the accused was not given the mandatory period of 30 days to appear before the Court. The mere fact that the Court adjourned it after the period of 30 days will not be treated as compliance of the provisions of Section 82 (1) Cr.P.C

Thus, the accused (petitioner herein) was not given the mandatory period of 30 days to appear before Court and it cannot be treated as compliance of Section 82 Cr.P.C.

In view of the aforementioned facts and circumstances, the impugned orders dated 06.03.2017 (Annexure P-1) and 05.11.2016 (Annexure P-2), passed by the Judicial Magistrate Ist Class, Narnaul are unsustainable in the eyes of law and the same are accordingly quashed.

The instant petition is allowed in the above-said terms.

All the pending miscellaneous applications, if any, stand disposed of.

19.12.2022

Apurva

**(HARSH BUNGER)
JUDGE**

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|--------------------------------|--------|
| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |