

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

CRM-M-18562-2022 (O&M)

Date of Decision:- 11.5.2022

Rafik

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Jamshed Ahmed, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana
assisted by ASI Sher Singh.

Mr. Rohit Rana Advocate for
Mr. Kunal Dawar, Advocate for the complainant.

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 12.1.2022 (Annexure P-9) passed by learned Sub-Divisional Judicial Magistrate, Hathin whereby the petitioner has been declared a proclaimed offender in respect of FIR No. 330 dated 23.10.2020 under Sections 148, 149, 323, 324, 506, 307 IPC at Police Station Hathin, District Palwal.
2. The FIR in question was lodged at the instance of Junaid, wherein it is alleged that when he alongwith other members of the family were present in their fields, Tauhid and Istak caught hold of his father Ajmat. While Rafik gave a blow with knife on his father's leg, Jan Mohammad is stated to have given a blow with rod on the leg of his father Ajmat. It is alleged that accused Memuna and Irfan caught hold of his brother Sakir while Lallu gave blow with '*lathi*' on his head.

3. While other co-accused are arrested and released on bail, the petitioner was not arrested and was declared a proclaimed offender. The impugned order dated 12.1.2022 (Annexure P-9) reads as follows :-

“Accused Rafik has not turn up despite proclamation. Mandatory period has already elapsed. Now accused Rafik is hereby proclaimed offender. Now to come up for 7.4.2022 for awaiting P.O. challan. Requisite information be sent to quarter concerned.”

4. The learned counsel for the petitioner has submitted that the impugned order cannot sustain inasmuch as there is no formal declaration of the petitioner, having been declared a proclaimed offender. It has also been submitted that although the serving official claims to have effected proclamation but a perusal of his report would show that the same is not attested by any witness. It has further been submitted that even the statement of the serving official ASI Amar Singh (Annexure P-11) would show that the same has been prepared in a mechanical manner inasmuch as the same is in the shape of a typed proforma in Hindi with blank spaces left therein for filling in the name and date which have been filled in by hand.
5. I have considered rival submissions addressed before this Court.
6. A perusal of the proclamation notice (Annexure P-10) would show that while the same was issued on 21.10.2021, the accused was required to appear in the Court on 12.1.2022. A perusal of the report of the serving official annexed with the proclamation notice as well as the statement dated 3.12.2021 (Annexure P-11) of the serving official would show that the proclamation had been effected on 1.12.2021. In other words, the proclamation had actually been effected more than 30 days prior to the date

fixed for causing appearance of the accused. As such, the mandatory period of 30 days as prescribed under Section 82 of Cr.P.C. was duly afforded to the petitioner to cause appearance before the trial Court as on 12.1.2022. In other words, the procedure as mandated under Section 82 Cr.P.C. has been followed. A perusal of the vernacular of the report of the serving official would show that the same is duly attested by two witnesses namely Vakeel and Abdul and the proclamation notice has been affixed on the house of the petitioner as well as on public place and also on the notice board of the Court, as is required under provisions of the Code.

7. As far as the vernacular statement of the serving official, as recorded in the Court on 3.12.2021 (Annexure P-11) is concerned, this Court certainly finds that the said statement is in the nature of a typed proforma where the name of the serving official, date etc. has been filled in with hand apart from the particulars of the FIR. Though, this Court cannot strictly appreciate such practice which apparently has been resorted to by the learned Magistrate on account of rush of work but at the same time it cannot be said that the said statement is a fabricated statement as the same has been recorded in the presence of learned SDJM, Hathin.
8. No other arguments has been raised before this Court. This Court does not find any infirmity in the procedure as adopted by the trial Court for conducting the proclamation proceedings. The requisite period of 30 days for causing appearance of the accused on the nominated date has duly been afforded as the proclamation was duly effected more than 30 days prior to the nominated date i.e. 1.12.2021.

9. Consequently, the impugned order dated 12.1.2022 (Annexure P-9) is not found to be suffering from any infirmity and is upheld.
10. There is no merit in the petition and the same is hereby dismissed.

11.5.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No