

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

240

CRM-M-34215-2018
Date of Decision :10.02.2022

Sanjay Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

(Through Video Conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.S. Rangpuri, Advocate for the petitioner.

Mr. Sandeep Singh Deol, DAG, Punjab.

Harsimran Singh Sethi, J. (Oral)

The present petition has been filed for quashing of FIR No.31 dated 31.03.2011 registered under Section 174-A of the IPC and Sections 25, 54, 59 of the Arms Act, 1959 (later on Sections 25, 54, 59 of the Arms Act were deleted) at Police Station Kotkapura Sadar, District Faridkot.

Learned counsel for the petitioner argues that in the present case, the FIR in question has been registered as the petitioner was declared proclaimed person vide order dated 24.11.2009 passed by the Chief Judicial Magistrate, Bathinda. Learned counsel for the petitioner submits that the said order has been passed contrary to the settled principle of law as settled by a Coordinate Bench of this Court in CRM-M-64796-2018 decided on 18.12.2019 titled as **Shokat Ali vs. State of Haryana and another.**

Learned counsel for the petitioner further submits that the proclamation was published on 21.10.2019 and the case was taken up for hearing on

27.10.2009 and as the required period of 30 days had not elapsed, case was adjourned to 24.11.2009, on which date, the petitioner was declared proclaimed person, which process has been held to be bad by a Coordinate Bench of this Court while passing order in Shokat Ali's case (supra). Learned counsel for the petitioner submits that as the FIR in question under Section 174-A of the IPC against the petitioner was registered as consequential proceedings of the order dated 24.11.2009, by which, the petitioner was declared proclaimed person, the said FIR is liable to be quashed.

Learned State counsel does not dispute the fact that the proclamation was issued on 21.10.2009 and the case was taken up for hearing on 27.10.2009, before the expiry of 30 days hence,, the case was adjourned to 24.11.2009 so as to complete the required period of 30 days, on which date, the petitioner was declared proclaimed offender and the present FIR is the consequential proceedings initiated against the petitioner being a proclaimed person.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Similar question as raised in this petition came up for consideration before a Coordinate Bench of this Court in CRM-M-64796-2018 decided on 18.12.2019 titled as **Shokat Ali vs. State of Haryana and another**, wherein, Coordinate Bench has held as under:-

“A perusal of proclamation notice dated 18.4.2018 (Annexure P-8) shows that the Trial Court, while issuing proclamation notice, directed the accused to cause appearance on 1.6.2018. A perusal of report of serving official (Annexure P-9) and the statement of serving official namely Constable Madan

Lal (Annexure P-10) reveals that it was just on 31.5.2018 that proclamation was effected. In other words, it was just one day before the nominated date for appearance that the proclamation was effected. Subsequently, the matter was adjourned by the Trial Court and it was ultimately on 4.7.2018 (Annexure P-2) that the petitioner was declared a proclaimed offender. A perusal of Section 82 Cr.P.C. would show that it is mandated that a clear period of 30 days is required to be afforded to the accused to cause appearance after publication is effected. Section 82 Cr.P.C. reads as follows:

“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.”

6. In the present case while publication was effected on 31.5.2018, the accused was required to appear on 1.6.2018. This Court in *Ashok Kumar Vs. State of Haryana 2013(4) R.C.R. (Criminal) 550* 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.”

In the present case also, the proclamation was issued on 21.10.2009 and the case was taken up on 27.10.2009, which was within a period of 30 days but, the case was then adjourned to 24.11.2009 so as to complete the proclamation period of 30 days, which process has already been held bad by a Coordinate Bench of this Court, hence, proclamation of the petitioner as proclaimed person vide order dated 24.11.2009 cannot be treated as valid proclamation and is accordingly set aside.

The proclamation of petitioner by the Court below vide order dated 24.11.2009 was not valid and is already set aside, consequential FIR registered against the petitioner on the basis of the said proclamation under Section 174-A cannot be allowed to be kept alive.

Keeping in view the above, FIR No.31 dated 31.03.2011 registered under Section 174-A of the IPC and Sections 25, 54, 59 of the Arms Act, 1959 (later on Sections 25, 54, 59 of the Arms Act were deleted) at Police Station Kotkapura Sadar, District Faridkot is quashed.

Petition stands allowed.

February 10, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No