

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-26772-2022

Date of Decision: 24.06.2022

Sarabjit Singh alias Nabi

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Ms. R.K. Grewal, Advocate for the petitioner.

Mr. Gurmeet Singh, A.A.G. Haryana.

VIKAS SURI, J.

1. This is a petition filed under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing of the impugned order dated 18.11.2002 (Annexure P-6), whereby the petitioner-Sarabjit Singh *alias* Nabi was declared proclaimed person in case FIR No.22 dated 09.07.2000 under Section 160 IPC, registered at Police Station Taraori, District Karnal, in contravention to the provisions of Section 82 Cr.P.C.

2. The facts as noticed in the paper book are that the above noted FIR came to be registered on the statement of Head Constable Dalip Singh, whereby he alleged that three young persons were quarrelling with each other on the main Nidana Road and thereby causing disturbance to public peace. Police investigation was set into motion and thereafter, challan was presented in the Court against all the accused, three in number.

3. It has come on record that after framing of the charge, accused Malkiat Singh died and vide order dated 30.01.2002, the proceedings against

the said accused abated and his name was deleted from the list of accused persons. Deceased was the brother of the other co-accused. On account of the communication gap, as alleged, when petitioner was informed by his counsel that the proceedings had abated after the death of co-accused Malkiat Singh, he got the impression that proceedings have culminated against all, which was incorrect. Thereafter, petitioner did not receive any notice, warrants or was ever made aware of any publication or other proceedings that would have notified him about the pendency of the trial. The trial Court, vide order dated 15.07.2002 (Annexure P-4), ordered proclamation under Section 82, 83 Cr.P.C. to be issued against the petitioner for 18.11.2002. Thereafter, vide order dated 18.11.2002 (Annexure P-6), petitioner was declared a proclaimed person under Section 82 Cr.P.C. (mentioned as 'proclaimed offender' in the said order).

4. Notice of this petition was issued to the State of Haryana on 20.06.2022 and the main contentions urged by learned counsel for the petitioner were noticed in the order issuing notice. Learned Assistant Advocate General, Haryana appeared on the said date, accepted notice on behalf of the respondent-State and sought time to assist the Court.

5. Learned counsel for the parties are ad idem, that calling of the original record of the trial Court is not necessitated, as primarily challenge is on the ground that proclamation alleged to be made was procedurally defective and there has been violation of statutory provisions; and for assisting on the said issues, sufficient material is available on record before this Court.

6. I have heard learned counsel for the parties at length and perused the case file.

7. Learned counsel for the petitioner contends that the proclamation was not in accordance with the provisions contained in Section 82 Cr.P.C., which are mandatory and as such, on account of that fact alone, the impugned order declaring the petitioner a proclaimed person deserves to be quashed. It is submitted that as per the said provisions, time period between the proclamation and appearance before the Court is required to be more than 30 days. Moreover, the Court is to record the specified day on which the proclamation was published, in view of the plain language of Section 82(3) Cr.P.C. It is further submitted that in the present case, both the above said statutory requirements are not fulfilled and the same is patent on the face of the record, while referring to Annexures P-4, P-5 and P-6. As such, the impugned order cannot be sustained.

8. Reliance is placed upon the decision of a coordinate Bench in ***Ashok Kumar vs. State of Haryana and another*, 2013 (4) RCR (Cri.) 550**, wherein it was held that after publication of the notice, accused has to be given mandatory period of 30 days to appear before the Court. It is also contended that failure to bring on record the specified day of the publication, to demonstrate compliance of mandatory procedural provisions, the same would be fatal to the case of the prosecution.

9. Per contra, learned State counsel submits that the FIR was registered for alleged commission of offence under Section 160 IPC, punishment for which is imprisonment for a term which may extend to one month or with fine which may extend to Rs.100/- or both. The alleged

incidence pertains to the year 2000, the impugned order was passed in 2002 and now even after two decades, proceedings before the trial Court are still pending on account of absence of the petitioner. It is, thus, contended that in such circumstances, even though there is no reply to the main petition as the present petition is to be considered on the legal issue only, factual aspect not being denied, the petitioner be directed to surrender before the trial Court and thereafter, seek regular bail from the said Court.

10. The contentions raised by learned counsel for the petitioner outweigh in merit and as such, the present petition is liable to be accepted.

11. Section 82 Cr.P.C. 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 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).”

12. Section 82 (1) Cr.P.C. specifically provides that publication of the written proclamation requiring the person in default to appear at a specified place and time, should not be less than 30 days from the date of publishing such publication. Sub Section (3) further provides that the statement in writing, by the Court issuing the proclamation, to the effect that proclamation is duly published on a specified day, in the specified manner, shall be conclusive evidence that the requirement of the said sub section has been complied with and that the proclamation was published on such day.

13. The paper book would go on to show that the proclamation was ordered to be issued vide order dated 15.07.2002 (Annexure P-4), which reads as under:-

“Present : APP for the State.

None for the accused.

Warrants of arrest of accused not received. Non bailable warrant against the accused several times, but, all in vain. I am satisfied that the presence of accused cannot be procured through ordinary process. Hence proclamation under Section 82, 83 be issued against the accused for 18.11.2002. Bailable warrant in the sum of Rs.1000/- with one surety in the like amount be issued against the surety for that date.

Sd/-
Ashwani Kumar,
JMIC, Karnal.
15.07.2002.”

14. Thereafter, the executing constable (police official) viz. EHC Mangal 428, who caused the publication in deference to the aforesaid order dated 15.07.2002, submitted the report dated 18.11.2002 (Annexure P-5), which reads as under:-

“Proclamation was affixed at the house of accused Sarabjit Singh @ Nabi approximately one month ago and the second publication was affixed outside the court. Report is presented.

EHC Mangal 428,
Police Station Taraori,
18.11.2002.”

A perusal of the aforesaid statement reveals that the date on which the publication is said to have been effected, was thus not brought before the

Court therein and as such, the Court has not recorded 'the specified day' that the proclamation was published on such day, as is mandated by sub-section (3) of Section 82 Cr.P.C. The order dated 18.11.2002 (Annexure P-6), declaring the petitioner proclaimed person reads as under:-

"FIR No.22
Dated 09.07.2000
Under Section 160 IPC
Police Station: Taraori.

Present : APP for the State.

None for the accused.

Proclamation against the accused has been received back duly affected. Statement of executing constable has been recorded separately. Accused has not turned up despite repeated calls. Further wait is not justified. Therefore, the accused is declared proclaimed offender. Intimation in this regard be sent to the concerned quarter. Now PW under Section 299 Cr.P.C. be summoned for 10.07.2003.

Sd/-
Ashwani Kumar,
JMIC, Karnal.
18.11.2002."

15. It is not disputed that the statement referred to in the impugned order is not any different than the report (Annexure P-5). The Court below has only recorded that the proclamation against the accused has been received back duly effected without specifying the day when the said publication is alleged to have been published. However, as per the mandate of the provisions contained under Section 82 (3) Cr.P.C., it is incumbent on the Court issuing the proclamation to record the 'specified day' that the proclamation was published on such day. In the aforesaid circumstances, it

is contended that statutory provisions prescribing the procedure to be followed have been violated, while passing the impugned order.

16. It has also been submitted that the mandatory legal requirement of 30 days period between the publication and the date of appearance in Court has also not been satisfied, as the specific day of publication is not forthcoming on record. Even the report (Annexure P-5) in that regard, is evasive as to the date of publication inasmuch as it has been stated that proclamation was fixed on the house of petitioner Sarabjit alias Nabi approximately one month ago. It is further submitted that use of the term approximately cannot be read as confirmatory of the stated period of time.

17. In view of the discussion, I am of the considered view that for want of strictly adhering to the mandatory statutory provisions, the impugned order dated 18.11.2002 (Annexure P-6) cannot be sustained.

18. It is also submitted that as per the FIR in question, there were three accused i.e. the petitioner and two other co-accused, who were brothers in relation. As noticed earlier, one of the co-accused Malkiat Singh had died and proceedings against the said accused have abated. The other co-accused has been acquitted vide judgment dated 04.12.2016 (Annexure P-3). The relevant part of the said judgment reads as under:-

“Having heard both the sides and gone through the case file carefully, I agree with learned defence counsel that the prosecution has failed to prove its case against accused as neither any independent witness has been joined or examined by the prosecution nor any explanation has been furnished by prosecution in this regard and hence, statements of official witnesses cannot be considered base for conviction of accused in this case. Moreover, when the complainant is

himself investigating the case, it prejudices that accused certainly. Accordingly, while giving benefit of doubt, accused stands acquitted of the charges leveled against him. His bail/surety bonds stand discharged. File be consigned to record room with note that file may not be destroyed as it will be taken up as and when presence of accused Sarabjit Singh is secured.”

19. In view of the above, this Court is of the considered opinion that the procedure prescribed in the mandatory provisions contained in Section 82 Cr.P.C. having not been strictly followed, the impugned order dated 18.11.2002 (Annexure P-6) declaring the petitioner proclaimed person (proclaimed offender) cannot be sustained as such and is hereby quashed.

20. The petitioner is directed to appear before the trial Court within three weeks from today, but not later than 15.07.2022.

21. The petition is accordingly disposed of in the above terms.

(VIKAS SURJ)
JUDGE

June 24, 2022
Sachin M.

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