

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-29878-2022 (O&M)
Date of Decision:- 30.8.2022

Sardar Singh and another Petitioners

Versus

State of Punjab and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Vivek K. Thakur, Advocate, for the petitioners.

Mr. Joginder Pal Ratra, Sr. DAG, Punjab.

Mr. Angad Parmar, Advocate, for respondent No.2.

GURVINDER SINGH GILL, J. (Oral)

The petitioners assail order dated 21.10.2015 (Annexure P-4) vide which the petitioners have been declared 'Proclaimed Offenders'.

Learned counsel for the petitioners submits that in the present case all the mandatory provisions of Section 82 Cr.P.C. have not been complied with in letter and spirit particularly as regards affording reasonable time to the petitioners to cause appearance on the nominated date after the proclamation had been effected.

Learned counsel has referred to the proclamation notices dated 10.9.2015 qua Manjit Kaur and Sardar Singh which have been annexed as

Annexures P-11 and P-12 respectively which show that even as per the such notices dated 10.9.2015 a period of less than 30 days was afforded to the petitioners to cause appearance inasmuch as the date nominated for causing of appearance is mentioned as 03.10.2015.

Still further the proclamation was actually effected on 16.9.2015 as would be evident from statements dated 21.10.2015 of serving official namely HC Harish Lal which have been annexed as Annexure P-14 and P-15 respectively. Thus, going by the date when the proclamation was actually effected i.e. on 16.9.2015, one finds that it was barely about 17 days which were afforded to the accused for causing appearance on the nominated date i.e. 03.10.2015.

Though the matter was subsequently adjourned by the trial Court and ultimately it was on 21.10.2015 that the petitioners came to be declared 'Proclaimed Offenders' vide impugned order of the even date Annexure P-4, but such like adjournment would not cure the defect as indicated above. 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 adjourns the matter, such adjournment beyond nominated date cannot be treated as compliance of provisions of Section 82(1) Cr.P.C. of providing 30 days. 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.”

The aforesaid judgment of Ashok Kumar (Supra) has recently been followed and reiterated by a recent judgment dated 16.07.2021 of this Court rendered in CRM-M-25088-2021 Anita Sharma Vs. State of Punjab, wherein it has been held as under :

*“..... ..Where the period between issuance and publication of the proclamation and the specified date of hearing is less than thirty days, the accused cannot be declared a proclaimed person/offender and the proclamation has to be issued and published again. (See **Dilbagh Singh Vs. State of Punjab (P&H): 2015(8) R.C.R. (criminal) 166 and Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550**)”*

“..... In the present case vide order dated 23.09.2019 proclamation was ordered to be published against the petitioner under Section 82 of the Cr.P.C. requiring the petitioner to appear before the Court on 01.11.2019. The proclamation was published on 30.10.2019. The petitioner was not given statutory minimum period of thirty days from 30.10.2019 the date of publication of the proclamation issued in terms of order dated 23.09.2019 for her appearance before the Court on 01.11.2019. Vide order dated 01.11.2019 learned Judicial Magistrate 1st Class, Jalandhar adjourned the case for awaiting the appearance of the petitioner on the ground that statutory period of thirty days had not elapsed and declared the petitioner to be proclaimed person vide order dated 06.12.2019. Learned Judicial Magistrate 1st Class, Jalandhar could not extend the time by simply adjourning the case for awaiting appearance of the petitioner and was mandatorily required to issue the proclamation again for publication thereof in accordance with the provisions of Section 82(2) of the Cr.P.C. It follows that the petitioner was wrongly declared proclaimed person vide impugned order dated 06.12.2019 in breach of the prescribed procedure and impugned order dated 06.12.2019 suffers from material illegality and is liable to be quashed.”

In these circumstances this Court finds that the requisite procedure as mandated by Section 82 Cr.P.C. has not been followed completely and in letter and spirit. Consequently, impugned order dated 21.10.2015 (Annexure P-4) cannot sustain and is hereby set aside. The petition is disposed of accordingly.

It shall be open to the petitioners to file separate petition for quashing of the FIR concerned as only limited notice had been issued at the initial stage.

30.8.2022

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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No