

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

CRM-M-37350-2021

Date of decision: 29.03.2022

ISRAN

.....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Argued by : Mr. Inderjeet Singh, Advocate
for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana
for the respondent/State.

SANT PARKASH, J.

Petitioner has filed present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of impugned order dated 30.10.2012 (Annexure P-1) passed by learned Judicial Magistrate First Class, Sub Division, Bilaspur in case FIR No.87 dated 28.05.2005 registered under Sections 379/411 of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station Chhachhrauli, whereby the petitioner was declared as proclaimed person under Section 82 of the Cr.P.C., and all consequential proceedings arising out of the same including FIR No. 211 dated 24.08.2020 registered under Section 174-A of the IPC registered in Police Station Chhachhrauli, District Yamuna Nagar.

The petition has been opposed by learned State Counsel in terms of reply by way of affidavit of Rajender Kumar HPS, Deputy

Superintendent of Police, Jagadhri (Yamuna Nagar) on behalf of respondent/State.

I have heard learned Counsel for the petitioner and learned State Counsel and have gone through the record.

Learned Counsel for the petitioner has submitted that the petitioner was wrongly declared proclaimed person vide order dated 30.10.2012 in breach of the prescribed procedure. The petitioner was not given thirty days time for his appearance before the Court. Therefore, the impugned order and all subsequent proceedings arising out of the same may be quashed.

On the other hand, learned State Counsel has submitted that the petitioner absconded and was declared proclaimed person vide order dated 30.10.2012 after expiry of the period of 30 days from publication of the proclamation. The impugned order does not suffer from any illegality and the petition may be dismissed.

Section 82 of the Cr.P.C., which provides for publication of proclamation against person absconding, 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.

(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)."

In the present case proclamation issued as per order dated 20.09.2012 was affixed outside the house of the petitioner on 26.09.2012 requiring the accused to appear before the Court on 29.09.2012 and only three days time was given to him for appearance. On 29.09.2012, the case was adjourned for 30.10.2012 for presence of accused/petitioner so as to complete the proclamation period of 30 days, which process has already been held as not a valid proclamation by Co-ordinate Bench of this Court.

The petitioner was not given statutory minimum period of thirty days from the date of publication of the proclamation.

Further, on perusal of Annexure P-4, it transpires that the proclamation was not on the prescribed proforma, rather it was a simple notice.

In ***Dilbagh Singh Vs. State of Punjab (P&H) : 2015 (8) R.C.R. (criminal) 166*** it was held by this Court that in order to ensure that an accused should have a fair opportunity to appear, 30 days clear notice is necessary and the proclamation should be published in the manner provided by law.

In ***Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550*** the case was adjourned by the trial Court vide order dated 04.01.2013 for issuance of proclamation under Section 82 of the Cr.P.C. for 06.03.2014 but period of 30 days had not elapsed from the date of publication till 06.03.2014. On that date case was adjourned to 13.03.2014 on which date the petitioner was declared as proclaimed offender. It was held by this Court that the proclamation was not published in accordance with the procedure prescribed under Section 82(1) of the Cr.P.C. by giving mandatory period of 30 days from the date of publication of the proclamation till the date of hearing fixed in the case for appearance of the petitioner and that the mere fact that on 06.03.2014 the Court adjourned the case to 13.03.2014 for completing the period of 30 days could not be treated as compliance of the provisions of Section 82(1) of the Cr.P.C. Accordingly, the order declaring the petitioner as proclaimed offender was set aside.

Also, in the present case, the proclamation was not in accordance with the mandatory requirements of Section 82(2)(i) of the

Cr.P.C. In his statement the executing constable stated that he affixed one copy of the proclamation outside the house of the accused and one copy in front of the court. The executing constable did not publicly read out the proclamation in some conspicuous place in the village where the petitioner ordinarily resided. Thus, the essential condition laid down in Section 82(2)(i)(a) of the Cr.P.C. as to the mode of publication of the proclamation was not complied with. In case **CRM-M-25729-2019** titled as '**Himani Sharma Vs. State of Haryana**' decided on **06.09.2019**, where the proclamation was not publicly read in some conspicuous place in the town/village in which the accused ordinarily resided, it was held that there was non-compliance of the mandatory provisions of Section 82 Cr.P.C. and the order declaring the petitioner as proclaimed offender was quashed.

In view of the above referred judicial precedents and the above discussed facts and circumstances of the case, issuance and publication of the proclamation was in breach of the prescribed procedure and the impugned order declaring the petitioner as proclaimed person and all subsequent proceedings arising out of the same including FIR No.211 dated 24.08.2020 registered under Section 174-A of the IPC in Police Station Chhachrauli, District Yamuna Nagar are liable to be quashed.

Accordingly, the petition is allowed and impugned order dated 30.10.2012 passed by learned Judicial Magistrate First Class, Sub Division, Bilaspur is set aside and all subsequent proceedings arising therefrom including FIR No.211 dated 24.08.2020 registered under

Section 174-A of the IPC in Police Station Chhachrauli, District Yamuna Nagar are quashed.

Petitioner is directed to appear before the learned trial Court within one month on furnishing of his bail bonds with surety to the like amount to the satisfaction of the concerned trial Court.

29.03.2022

kavneet singh

(SANT PARKASH)
JUDGE

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