

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

Date of Decision: 16.05.2022

211 (4)

CRM-M-54283-2021

ANGREJ SINGH

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

WITH

211 (7)

CRM-M-2470-2022

RASHPAL SINGH

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

WITH

211 (9)

CRM-M-2474-2022

MANJIT SINGH

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Sunny Saggar, Advocate &
Ms. Armaan Saggar, Advocate for the petitioners.

Ms. Amarjit Kaur Khurana, DAG, Punjab.

Mr. Vikas Gupta, Advocate for the complainant.

VINOD S. BHARDWAJ, J. (ORAL)

The instant three petitions are being disposed of by one
common order as the point of issue involved in all the three petitions is

same. For the facility of reference, the facts are being noticed from CRM-M-54283-2021.

The bunch of the present three petitions seek the invocation of Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.') for quashing of the order dated 13.09.2021 (Annexure P-4) (wrongly mentioned as order dated 14.09.2021- Annexure P-5) passed by the Judicial Magistrate Ist Class-cum-Additional Civil Judge (Senior Division), Tarn Taran, whereby the petitioners have been declared proclaimed offenders in case bearing FIR No.71, dated 28.05.2021 under Section 307, 506, 148 and 149 of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC') (Sections 302, 212, 323, and 452 of the IPC added later on) registered at Police Station Sirhali, District Tarn Taran, Punjab.

Learned counsel appearing on behalf of the petitioners *inter alia* contend that the order of proclamation declaring the petitioners as proclaimed offenders has been passed without complying with the mandatory provisions of Section 82 of the Cr.P.C. It is argued that the mandatory period of 30 days is required to be provided to the accused and that in the event of such mandatory period not being provided, any subsequent adjournment beyond the aforesaid period cannot be treated as compliance of the provisions of Section 82(1) of the Cr.P.C.

With a view to crystalize his arguments, he made reference to the order dated 30.07.2021 passed by the Judicial Magistrate Ist Class-cum-Additional Civil Judge (Senior Division), Tarn Taran, whereby the non-bailable warrant issued against the petitioners were received back unserved and a satisfaction was recorded by the Court to secure the presence of the

accused persons through proclamation under Section 82 of the Cr.P.C. to be issued for 07.09.2021. On that date, following order was passed:

“Statement of serving official recorded today. Now the matter stands adjourned to 13.09.2021.”

The statement of ASI Tarsem Singh No.1448/TT PS Sarhali, Tarn Taran recorded on 07.09.2021 is extracted as under:

“Proclamation of following accused-

- 1. Gurjant Singh S/o Sukhdev Singh*
- 2. Gurwinder Singh S/o Sawinder Singh*
- 3. Rashpal Singh S/o Sukhdev Singh*
- 4. Angrej Singh S/o Desa Singh*
- 5. Manjit Singh S/o Santokh Singh*
- 6. Jaswinder Singh S/o Jagir Singh*
- 7. Daler Singh S/o Samma Singh*
- 8. Sukhchain Singh S/o Desa Singh*
- 10. Desa Singh S/o Ajit Singh*
- 11. Gurbinder Singh S/o Jaswant Singh*

All r/o Shingarpur PS Sarhali, District Tarn Taran, was ordered to be executed through me. Accused are not traceable despite efforts. The Proclamation was published and pasted on 09.08.2021 in the conspicuous places and where the accused were residing. Copy was also affixed in the court house. Proclamation of accused is Ex.P1, where as on which my report is Ex.P2.”

Learned counsel thus contends that the proclamation was published and affixed/pasted at conspicuous places where the accused persons were residing and one copy of proclamation was also affixed/pasted in the Court house on 09.08.2021.

Eventually, the petitioners were declared proclaimed offenders

on 13.09.2021. Learned counsel submits that the presence of petitioners was ordered to be procured through proclamation vide order dated 05.08.2021 for 07.09.2021. He thus contends that proclamation having been published on 09.08.2021, both dates i.e. 09.08.2021 and 07.09.2021 have to be excluded from the computation of period of 30 days in terms of Section 9 of the General Clauses Act, 1897. The said Section 9 in the General Clauses Act, 1897 is reproduced herein below:

“9. Commencement and termination of time.

(1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any other period of time, to use the word 'to'.

(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.”

A further reference is made to the provisions of Section 82 of the Cr.P.C., which specifies that the proclamation requiring a person to appear at a specified place and time could not be less than 30 days from the date of publishing such proclamation. The Section 82 of the Cr.P.C. is reproduced herein below:

“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.”

It is thus contended that since the date of proclamation mandating the petitioners to appear before the Court was 07.09.2021 and the publication having been done only on 09.08.2021, the date of commencement and the last date in the said series being required to be excluded, the proclamation thus did not provide a clear period of 30 days and instead was done after a clear period of 28 days only.

Learned State counsel assisted by Mr. Vikas Gupta, Advocate for the complainant have submitted that even though the period of 30 days may have expired on 07.09.2021 only, however, the petitioners were actually declared as a proclaimed offenders vide order dated 13.09.2021 and as such, no prejudice has been caused to the petitioners and that no such benefit, as sought by the petitioners, can be extended to them.

Learned State counsel, however, could neither dispute the applicability of Section 9 of the General Clauses Act, 1897 nor could he refer to any judgment or statutory provisions to the contrary as would necessitate that the said dates too must be included/computed for counting of 30 days.

A reference was also made to the judgment of **Shokat Ali Vs. State of Haryana and another** reported as **(2020)2 RCR (Criminal) 339** passed by a Coordinate Bench of this Court, wherein it was held that any subsequent adjournment in the matter cannot be treated as compliance of the provisions of Section 82 of the Cr.P.C. and that order of proclamation cannot be sustained or deemed to be valid in case the mandatory statutory period of 30 days is not furnished to the accused to cause his appearance. The relevant extract of the said judgment is reproduced herein below:

“5. 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.....

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.”

7. *In view of the aforestated factual position, wherein a period of only 1 day was afforded for causing appearance after the proclamation was effected and in light of ratio of Ashok Kumar’s case (supra), the petition is accepted and the impugned order dated 4.7.2018 passed by learned Sub Divisional Judicial Magistrate, Kalka (Annexure P-2) is hereby set aside and resultantly FIR No.199 dated 23.7.2018 registered at Police Station Pinjore City, District Panchkula under Section 174-A of Indian Penal Code is quashed.”*

The ratio of the said judgment is not controverted or disputed

by the counsel representing the State as well as the respondent-complainant

and it is also not denied that the provisions enshrined in Section 82 of the Cr.P.C. are mandatory in nature and have to be adhered to strictly.

In view of the factual matrix noticed above and the judgment passed by this Court as also the statutory provisions enshrined in Section 9 of the General Clauses Act, 1897, the impugned order dated 13.09.2021 (Annexure P-4) passed by the Judicial Magistrate Ist Class-cum-Additional Civil Judge (Senior Division), Tarn Taran is set aside.

The petitions are accordingly allowed.

(VINOD S. BHARDWAJ)
JUDGE

16.05.2022
rajender

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