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

CRM-M-51841-2022(O&M)
Date of Decision: 11.11.2022

LIAKAT ALI

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Prince Pasricha, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. AG, Punjab.

HARSH BUNGER, J. (Oral)

The petitioner has filed the instant petition under Section 482 of Code of Criminal Procedure for setting aside the order dated 30.07.2022 (Annexure P-1) whereby, the petitioner has been declared as proclaimed person on account of his non-appearance in case bearing CIS No.CHI/132/2020 in FIR No.0226 dated 16.09.2019 under Section 188 of Indian Penal Code, registered at Police Station Sultanpur Lodhi, District Kapurthala.

Learned counsel for the petitioner has submitted that the petitioner has been wrongly declared as a proclaimed person and that too without complying with the provisions contained under Section 82 Cr.P.C. It

is further submitted that the petitioner is involved in case FIR No.0226 dated 16.09.2019 under Section 188 of Indian Penal Code, 1860 registered at Police Station Sultanpur Lodhi, District Kapurthala (Annexure P-2) and he was admitted to bail vide order dated 16.06.2020 passed by the Court of learned Sub Divisional Judicial Magistrate and the petitioner had been appearing regularly before the trial Court. However, on account of some personal difficulty he could not appear on 10.02.2022 and ultimately the petitioner was declared as a proclaimed person vide order dated 30.07.2022 (Annexure P-1) passed by learned Sub Divisional Judicial Magistrate.

Notice of motion.

Mr. Subhash Godara, Addl. AG, Punjab accepts notice on behalf of the State to whom an advance copy of the petition has been served.

Learned State counsel has opposed the petition by submitting that the petitioner has been rightly declared as a proclaimed person as he had failed to appear before the trial Court and accordingly he prays for dismissal of the instant petition.

I have heard learned counsel for the parties and with their able assistance perused the paperbook.

Before considering the submission made by the respective counsels, it would be appropriate to refer to Section 82 of Cr.P.C, which 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."

A perusal of above extracted Section 82 of Cr.P.C. would manifest that 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."

Still further as per Section 82(3), the concerned Court is

required to record a statement in writing to the effect that the proclamation was duly published on a specified day in the manner as specified in Clause (i) of Sub-Section 2 and the same shall be taken as conclusive evidence that requirements of Section 82 have been complied with and that the proclamation was published on such day.

In the instant case, the serving officer made the following service report.

"I enquired about the house of above mentioned person but everybody told me that no person of this name resides in the dera/outskirts or in the village. But still, in compliance of your order, one copy of proclamation issued was given to Gujjar Lal Hussain, one copy was affixed in the village and one copy was affixed on the common way and one copy has been affixed on the notice board of court complex."

Further, even, the witness of the service report namely Lal Hussain made the following statement.

"I am resident of above mentioned address and has been living at above mentioned address for 20 years . I know each and every person living in the dera (outskirts of village). Hon'ble court has issued a proclamation against Liaqat Ali. Copies of proclamation issued have been affixed in the deras/outskirts of the village Kiri Afghana and one copy has been affixed at common way in the chownk. But no man of this name resides in my village."

A perusal of the above-said service report would clearly indicate that the provisions contained in Section 82(2) (i) have not been complied with inasmuch as that one copy of the proclamation was affixed in the village and one copy was affixed on the common way and one copy has been affixed on the notice board of the Court Complex, however, the said proclamation was not read publicly in some conspicuous place of town or

village in which the accused ordinarily resides. It is well-settled that all provisions of Section 82(2) (i) Cr.P.C. are to be mandatorily complied with cumulatively and not alternatively and non-compliance of even one provision would render the proclamation as bad. Thus, the endeavour of the serving officer to serve the proclamation notice upon the accused is deficient and cannot be sustained.

In view of the aforementioned facts and circumstances, the impugned order dated 30.07.2022 (Annexure P-1) passed by the learned Sub Divisional Judicial Magistrate/trial Court is unsustainable in the eyes of law and the same is accordingly quashed.

The instant petition is allowed in the above-said terms.

11.11.2022
Amandeep

(HARSH BUNGER)
JUDGE

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