

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

272

CRM-M-6681-2021(O&M)

Date of decision: 06.02.2023

SANJEEV KUMAR

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R.K. Handa, Advocate and
Mr. Dharam Bir Bhargav, Advocate
for the petitioner.

Mr. Kamalpreet Bawa, AAG Punjab.

AMAN CHAUDHARY. J.

Present petition has been filed for quashing of order dated 13.01.2021, Annexure P-2 passed by learned SDJM Kharar, whereby the petitioner has been declared as proclaimed person in case FIR No.60 dated 16.08.2017 under Sections 406 and 420 IPC and Sections 419, 428, 465, 467, 468, 471, 473, 201, 120-B IPC added later on registered at Police Station Naya Gaon, District SAS Nagar, Mohali.

Learned counsel for the petitioner submits that the FIR was registered against the petitioner on 16.08.2017, wherein, petitioner was not named. It is on account of disclosure statement made by co-accused Vivek Kumar that the name of the petitioner surfaced in the case. However, the petitioner appeared before the Investigating Officer when he came to know that he was called by the Police and that proclaimed person Karanbir Singh had been arrested in the said FIR. Thereafter he applied for grant of anticipatory bail which was dismissed on 21.12.2018. He was called by the Police and he joined investigation

twice over wherein he was told by the Investigating Officer that he is no longer required. A message will be sent to him in case he is required again. It is in December 2020, after almost 2 years, when contacted by Constable visited his house while he was away that he became aware that proceedings under Section 82 CrPC have been initiated against him. Notice dated 01.12.2020 was issued for his appearance for 14.12.2020, whereas the requirement as per the provision of Section 82 CrPC is of 30 days notice to appear from the date of order. Thus, was declared proclaimed person without complying with the said provisions vide order dated 13.01.2021, Annexure P-2. He makes a reference to the reply filed by the State in the present petition wherein also it is admitted that the petitioner was required to appear before the trial Court on 14.12.2020 vide order vide dated 01.12.2020. To buttress his submission, he places reliance on the judgments in the cases of **Ashok Kumar vs. State of Haryana and another** 2013(4) RCR (Crl.) 550.

Learned State counsel opposes the petition on the ground that the petitioner did not appear before the trial Court even after the he was issued the notice and submits that the petitioner was rightly declared as proclamation person.

Heard.

This Court in the case of **Ashok Kumar** (supra) held thus:-

“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 very purpose of issuance of summons, warrants etc. is to compel

and secure the presence of the accused to face trial and establish the rule of law so as to ensure finalization of the proceedings.

Adverting to the facts of the present case inasmuch the petitioner was never served, thus could not appear before the trial Court, which appears to be justified explanation of absence. Moreover, vide order dated 01.12.2020, the petitioner was required to appear on 14.12.2020, which period was less than 30 days as per the provisions of Section 82 Cr.P.C. At times, the accused can be prevented by sufficient reasons such as no effecting of service as in the present case, to put an appearance before the Court, as such absence cannot necessarily be construed as deliberate and willful. The proclamation proceedings without effecting service upon the petitioner as well as are in violation of Section 82 Cr.P.C. as the mandatory period of 30 days of publication of proclamation had not been provided. However, it is incumbent upon them to join the proceedings, before the trial Court, for the culmination of the same. Thus, keeping in view the facts and circumstances of this case that the petitioner had joined the proceedings and the judgment referred to hereinabove being applicable to the instant case, and to make the ends of justice meet, the present petition deserves to be allowed.

Accordingly, the impugned order dated 13.01.2021, Annexure P-2, whereby the petitioner has been declared as proclaimed person is set aside.

(AMAN CHAUDHARY)
JUDGE

February 06, 2023

S.Sharma(syr)

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