

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6234 of 2022

Date of Decision: April 18, 2023

Baljit Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Amit Arora, Advocate for the petitioner.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.

Prayer by way of this petition filed under Section 482 Cr.P.C is to quash FIR No.203 dated 7.08.2019 registered under Section 174-A IPC at Police Station Sadar Tarn Taran, District Tarn Taran and all the subsequent proceedings emanating therefrom.

2. It is contended that Tarn Taran Primary Cooperative Agriculture Development Bank Limited, Branch Tarn Taran had instituted a criminal complaint to prosecute the accused (petitioner) under Section 138 of the Negotiable Instruments Act with the averments that the petitioner had taken loan by mortgaging his landed property but defaulted in making payment on installments. Cheque issued by the petitioner in discharge of his outstanding dues was dishonored on presentation. Petitioner failed to make the payment despite notice. Complaint was filed.

3. It is contended that no summons were received by the petitioner at any point of time. Learned Chief Judicial Magistrate, Tarn

Taran by wrongly observing that petitioner was avoiding to receive summons or was avoiding to be served through warrants of arrest, issued proclamation under Section 82 Cr.P.C. Though no proclamation had been issued for 22.10.2018, petitioner was declared proclaimed person on account of the proclamation having been issued for 05.10.2018. On direction of the learned Chief Judicial Magistrate, Tarn Taran, present FIR under Section 174-A IPC was registered.

4. Petitioner contends further that on coming to know about the pendency of the complaint, he put in appearance before the court and was allowed bail. Later on, he cleared the pending loan amount along with interest to the complainant- Bank. Complaint was dismissed as withdrawn vide order dated 07.01.2020 (Annexure P3) and the petitioner stood acquitted. Petitioner submits that as compliance of Section 82 Cr.P.C was not made as per law and the fact that main complaint in which petitioner was declared proclaimed offender has already been withdrawn, therefore, the FIR in question and consequent proceedings deserve to be quashed.

5. Learned State Counsel has not disputed the factual position but submits that petitioner is liable to be proceeded criminally, as he did not deliberately appear before the Court.

6. I have considered the submissions of both the sides and perused the paper book.

7. As per order dated 19.07.2018 passed by learned Chief Judicial Magistrate, Tarn Taran in the complaint case under Section 138 of the Negotiable Instruments Act, notice issued to the accused was

received with the report that he was trying to avoid the service of summons and so his presence was directed to be secured through warrants of arrest returnable by 28.08.2018. It was noticed in the order dated 28.08.2018 that warrants of arrest was received back with the report that accused was trying to avoid the service. By recording satisfaction that presence of petitioner cannot be procured in ordinary manner as he was trying to avoid appearance, proclamation under Section 82 Cr. P.C was directed to be issued, returnable by 05.10.2018. It is revealed further that on 05.10.2018, proclamation was received back duly executed but it was noticed that period of 30 days had not elapsed and so matter was adjourned to 21.10.2018 for presence of the accused-petitioner. Since 21.10.2018 was a Sunday, so file was taken up on 22.10.2018 and despite the fact that there was no proclamation for appearance/surrender of accused- petitioner for 22.10.2018, he was declared proclaimed person on that day and FIR under Section 174-A IPC was directed to be registered.

8. 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 subsection (1).”

9. In ***Sonu Vs. State of Haryana – 2021(1) RCR (Criminal)***

319, a co-ordinate Bench of this court has summarised the law on the procedure prescribed under Section 82 Cr.P.C., for declaring the person as proclaimed offender. It was held as under:-

“The essential requirements of [Section 82](#) of the Cr.P.C. for issuance

and publication of proclamation against an absconder and declaring him as proclaimed person/offender may be summarized as under:-

*(i) Prior issuance of warrant of arrest by the Court is sine qua non for issuance and publication of the proclamation and the Court has to first issue warrant of arrest against the person concerned. (See **Rohit Kumar Vs. State of Delhi: 2008 Crl. J. 2561**).*

*(ii) There must be a report before the Court that the person against whom warrant was issued had absconded or had been concealing himself so that the warrant of arrest could not be executed against him. However, the Court is not bound to take evidence in this regard before issuing a Proclamation under [Section 82 \(1\) of the Cr.P.C.](#). (See **Rohit Kumar Vs. State of Delhi: 2008 Crl. J. 2561**).*

*(iii) The Court cannot issue the Proclamation as a matter of course because the Police is asking for it. The Court must be prima facie satisfied that the person has absconded or is concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence. (See **Bishundayal Mahton and others Vs. Emperor: AIR 1943 Patna 366 and Devender Singh Negi Vs. State of U.P. : 1994 Crl LJ (Allahabad HC) 1783**).*

*(iv) The requisite date and place for appearance must be specified in the proclamation requiring such person to appear on such date at the specified place. Such date must not be less than 30 clear days from the date of issuance and publication of the proclamation. (See **Gurappa Gugal and others Vs. State of Mysore: 1969 CriLJ 826 and Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339**).*

*(v) 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 4 of 8 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**).*

(vi) The Proclamation has to be published in the manner laid down in [Section 82 \(2\) of the Cr.P.C.](#) For publication, the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be

*affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house. The three sub-clauses (a)-(c) in [Section 82](#) (2)(i) of the [Cr.P.C.](#) are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. (See **Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368**). Where the Court so orders a copy of the proclamation has to be additionally published in a daily newspaper circulating in the place in which the accused ordinarily resides. Advisably, proclamation has to be issued with four copies so that one each of the three copies of the proclamation may be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides, to some conspicuous place of such town or village and to some conspicuous part of the Court- house and report regarding publication may be made on the fourth copy of the proclamation. Additional copy will be required where the proclamation is also required to be published in the newspaper.*

*(vii) Statement of the serving officer has to be recorded by the Court as to the date and mode of publication of the proclamation. (See **Birad Dan Vs. State : 1958 CriLJ 965**).*

*(viii) The Court issuing the proclamation has to make a statement in writing in its order that the proclamation was duly published on a specified day in a manner specified in [Section 82\(2\)\(i\)](#) of the [Cr.P.C.](#). Such statement in writing by the Court is declared to be conclusive evidence that the requirements of [Section 82](#) have been complied with and that the proclamation was published on such day. (See **Birad Dan Vs. State : 1958 CriLJ 965**).*

*(xi) The conditions specified in [Section 82\(2\)](#) of the [Cr.P.C.](#) for the publication of a Proclamation against 5 of 8 an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the Proclamation and proceedings subsequent thereto a nullity. (See **Devendra Singh Negi alias Debu Vs. State of U.P. and another : 1994 CriLJ 1783** and **Pal Singh Vs. The State : 1955 CriLJ 318**).*

10. In addition to above, it is the requirement of law that proclamation should be published for that date on which the person concerned is required to put in appearance/surrender before the court and on his failure to do so, he is declared a proclaimed person/ offender. That date of his appearance/ surrender should not be less than 30 days from the date of publication of the proclamation.

11. In the present case, as is evident from the order dated 28.08.2018, no report was received that the petitioner- accused had absconded or was concealing himself due to which the warrants of arrest could not be executed against him. Satisfaction has been recorded simply on the basis of the report that the petitioner was avoiding service of warrants. Learned Court did not go into the aspect that in case petitioner was avoiding the service of warrants, why the executing official did not arrest the petitioner, or in what manner petitioner had tried to avoid the service. In the absence of any satisfaction to the effect that the petitioner-accused had absconded or had been concealing himself to avoid the execution of warrant of arrest against him, the issuance of the proclamation under Section 82 Cr.P.C could not be ordered.

12. Still further, the proclamation was issued vide order dated 28.08.2018 for 05.10.2018. The proclamation was effected for said date i.e. 05.10.2018 but as the Court noted that 30 days' period had not elapsed, so matter was adjourned and the petitioner was declared proclaimed person on 22.10.2018. There is nothing on record to suggest that any proclamation had been issued for appearance/ surrender of the petitioner for 22.10.2018.

13. In the above circumstances, order dated 22.10.2018 declaring the petitioner as proclaimed person and directing to register FIR under Section 174-A IPC, is clearly illegal and consequently, the FIR No.203 dated 07.08.2019 registered under Section 174-A IPC on the basis of the order of the Court, cannot be sustained in the eyes of law.

14. Apart from above, on coming to know about the registration of the complaint, petitioner put in appearance before the court and was

allowed bail as per order dated 03.10.2019. Not only this, matter stood compromised and the complaint in question, in which the petitioner was declared proclaimed person, has since been withdrawn by the complainant of the case, as is evident from the order dated 07.01.2020 (Annexure P.3) and the petitioner was acquitted of the charges.

15. Having regard to all the aforesaid facts and circumstances, continuation of the present proceedings under Section 174-A IPC shall be abuse of process of law. As such, FIR in question along with all the consequential proceedings are hereby quashed.

April 18, 2023
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(DEEPAK GUPTA)
JUDGE

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