

(115)

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

CRM-M-6620 of 2023 (O&M)  
**Date of Decision: April 27, 2023**

**Sarif Muhamed**

**...Petitioner**

## Versus

## State of Punjab

## ...Respondent

**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

**Present:-** Mr. Azad Khan, Advocate for the applicant- petitioner.

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**DEEPAK GUPTA, J.(Oral)**

**CRM No.14102 of 2023**

This is an application to place on record zimni orders passed by the trial Court as Annexure P.4 and the statement of the I.O as Annexure P.5.

Application is allowed. Annexures P.4 and P.5 are taken on record.

CRM-M-6620 of 2023

Prayer in this petition is to set aside order dated 19.12.2022 (Annexure P.3) passed by learned Judicial Magistrate Ist Class, Shaheed Bhagat Singh Nagar in case FIR No.64 dated 26.04.2016 registered at Police Station Rahon, District SBS Nagar under Section 21(1), 4(1) of Mines and Minerals (Regulation of Development) Act, 1957.

2. It is contended by learned counsel that the petitioner was facing trial after being granted bail. However, he could not attend the Court on 11.04.2022 as being driver by profession, he was out of station.

Thereafter, he did not receive any notice from the Court nor the proclamation was issued for the date on which he was declared proclaimed person.

3. Notice of motion.

4. Mr. P.S. Pandher, AAG, Punjab, accepts notice on behalf of the respondent- State.

5. Zimni orders Annexure P.4 placed on record by learned counsel for the petitioner, reveal that the petitioner had appeared on 15.03.2022. Due to his absence on the next date of hearing, i.e. 11.04.2022, his bail was cancelled. However, the subsequent zimni orders reveal that warrants of arrest issued against the petitioner were received back unexecuted and then vide order dated 01.11.2022, proclamation was directed to be issued for 18.11.2022 and presence of the accused- petitioner was directed to be awaited for 19.12.2022. Notice of proclamation reveals that the same was issued for 18.11.2022 on which date, petitioner was directed to surrender. However, instead of 18.11.2022, on which date even 30 days period had not elapsed, the petitioner was declared proclaimed offender on 19.12.2022 despite the fact that there was no proclamation for that date.

6. 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).”*

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

**319**, a co-ordinate Bench of this court has summarized 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 CrI. 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 CrI. 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 CrI 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**).*

8. 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.

6. In view of the legal and factual position above, this petition is accepted and the impugned order dated 19.12.2022 (Annexure P.3) being patently illegal, the same is hereby set aside.

**April 27, 2023**  
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**(DEEPAK GUPTA)**  
**JUDGE**

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