

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

CRM-M-9207 of 2023 (O&M)
Date of Decision: April 19, 2023

Karnail Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Pratap Singh Gill, Advocate for the petitioner.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.

CRM No.16155 of 2023

This is an application to place on record zimni order
Annexure P.5. Application is allowed. Annexure P.5 is taken on record.

CRM-M-9207 of 2023

Prayer in this petition filed under Section 482 Cr.P.C is for
quashing FIR No.69 dated 08.09.2019 registered under Section 174-A
IPC at Police Station Ghanaur, Patiala under Section 174-A IPC
(Annexure P.2) and all the subsequent proceedings arising therefrom and
also to quash order dated 03.08.2019 (Annexure P.1), whereby petitioner
was declared proclaimed person by learned Judicial Magistrate Ist Class,
in a criminal complaint bearing No.1357 of 2018 titled “The Jakhepal
Cooperative House Building Society Ltd. Vs. Karnail Singh.

2. It is revealed that the Jakhepal Cooperative House Building
Society Limited, Ghanaur, Tehsil Rajpura, District Patiala through its

representative had filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioner – accused regarding dishonour of a cheque for an amount of ₹1,60,668/-. During proceedings of that complaint, petitioner was declared as proclaimed person and on the direction of the Court, present FIR was registered.

3. Learned counsel for the petitioner contended that after recording preliminary evidence, summoning order was passed on 27.07.2018 (part of Annexure P.5). Notice issued to the accused-petitioner was received back on 28.09.2018 with the report of incorrect address. Correct address was never filed but on the alleged refusal of the petitioner to receive the summons, his presence was sought to be secured through non bailable warrants as per order dated 01.02.2019 (part of Annexure P.5). It was reported to the Court on 29.03.2019 that non bailable warrants sent at address No.1 remained unserved as petitioner was found to be not residing therein, whereas address No.2 was found to be incomplete. It is contended by learned counsel that as petitioner did not use to reside at none of the given addresses, so there can be no question of refusal of service but ignoring this aspect, learned trial Court vide order dated 29.03.2019 ordered issuance of proclamation under Section 82 Cr.P.C and on the basis of that proclamation, declared him a proclaimed person on 03.08.2019. Still further, it is contended that as the petitioner came to know about filing of the complaint and registration of the FIR against him, he appeared before the trial Court and the matter has since been compromised in the Lok Adalat and complaint itself was dismissed as withdrawn as per order dated 14.05.2022.

4. Order dated 29.03.2019 of learned Judicial Magistrate Ist Class, Rajpura, whereby proclamation was directed to be issued against

the petitioner, reads as under: -

“NBW issued to accused at address no.1 received back unserved with the report that it was intimated to serving constable that accused Karnail Singh does not live at the said address anymore. NBWs of accused issued at address no.2 received back with the report of incomplete address. It appears that the presence of accused cannot be procured through warrants of arrest. As such, service of accused be now effected through proclamation under Section 82 Cr.P.C. The serving constable is directed to effect the proclamation on or before the 10.04.2019 and to appear in this Court to record his statement regarding execution of proclamation on 24.04.2019. Appearance of accused be awaited till 17.05.2019.

Complainant is also directed to supply the list of property (both movable or immovable) of the accused so that proceedings under Section 83 Cr.P.C can be initiated against the accused.”

5. 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)."*

6. 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**).*

7. 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.

8. In present case, as is evident from the various reports, the summons sent to the petitioner were received with the report of incorrect address. There is nothing on record to suggest that complainant of the case had ever provided correct address to the petitioner. However, without looking into this aspect that warrants sent at both the addresses were received with the report that petitioner was not residing therein or the address was incomplete, the trial Court appears to be swayed by the report of refusal, though there could be no question of refusal when the address itself was incorrect and the correct address had not been filed.

9. Apart from above, the order dated 29.03.2019 of learned Judicial Magistrate Ist Class, reproduced above, clearly reveals that trial Court did not record its satisfaction that petitioner- accused had either absconded or had been concealing himself so as to avoid the warrants of arrest.

10. In these circumstances, having regard to the legal position discussed above, the order dated 29.03.2019 whereby proclamation was issued and the order dated 03.08.2019 whereby petitioner was declared as proclaimed person, cannot be sustained in the eyes of law and consequent thereto, the FIR lodged on the basis of order dated 03.08.2019 deserved to be quashed.

11. Besides, 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 14.05.2022.

12. 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 19, 2023

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(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No