

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 23rd August, 2023

CRM-M-10375-2020

Harpal SinghPetitioner

Versus

State of Haryana ...Respondent

CRM-M-10407-2020

Satish KumarPetitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Inderjeet Singh, Advocate
for the petitioner(s).

Mr. A.K. Sehrawat, DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

The petitioners herein have laid challenge to order dated 16th of August, 2016 declaring the petitioners to be Proclaimed Persons u/s 82 Cr.P.C. and subsequent proceedings including FIR No.1490 dated 10th of December, 2019 registered for the offence punishable under Section 174-A IPC, at Police Station City Jagadhri, District Yamuna Nagar which is nothing but consequence of the order dated 16th of August, 2016.

2. Counsel for the petitioners has attacked the impugned order claiming that the statutory provisions as contained in Section 82 Cr.P.C.

have not been complied with and therefore the impugned order and the consequence thereof including FIR are bad in law. Attention of this Court has been invited to the proclamation issued under Section 82 Cr.P.C. placed on record at Annexure P-4. A bare perusal thereof would reveal that the proclamation is of dated 21st of May, 2016 whereby the accused/petitioners have been required to appear before the Court on 18th of July, 2016. Counsel for the petitioners then refers to the statement made by the Executing Officer, dated 18th of July, 2016 placed on record as Annexure P-3 whereby the Executing Officer claims to have pasted the proclamation on the residential premises of the petitioners and the notice board of the Court only on 16th of July, 2016. Counsel submits that on 18th of July, 2016 the Court did acknowledge the fact that the statutory period of thirty days from the date of affixation have not expired yet simply adjourned the matter for 16th of August, 2016 and on the said date the impugned order has been passed. The other ground of attack is that Section 82(2) Cr.P.C. provides for three different modes of publication and all three have to be complied with together. It has been contended that the proclamation having never been publicly read in the conspicuous place of the town or village in which the petitioners are residing, the order ought not have been passed.

3. Counsel for the State is not in position to dispute the aforesaid factual assertions made by counsel for the petitioner on the basis of the record. However, he submits that a thirty days clear time was provided to the petitioners to appear before the Court and thus Section 82 Cr.P.C. stands

complied with in its letter and spirit.

4. I have heard counsel for the parties and have gone through records of the case.

5. It will be apposite to peruse Section 82 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.

[(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 sub-section (1).]”

6. Section 82 Cr.P.C. is part of Chapter VI of the Criminal Procedure Code that prescribes the Process to Compel Appearance. The proceedings under Part 'C' of the said Chapter are in form of last remedy with the Court for compelling attendance of an accused person or witness whose presence is required. The same entails grave consequences. Section 174-A of the Penal Code provides punishment of imprisonment which may extend to three years along with fine where a person fails to appear at the specified place and specified time as required by the proclamation published under sub-Section 1 of Section 82 of the Code. Chapter VI of the Criminal Procedure Code calls for attachment and sale of the property of the proclaimed offender. Keeping in view these serious consequences of the pronouncement under Section 82(4) Cr.P.C., the Code mandates procedure prior to such pronouncement. The same is based on fairness. Since the pronouncement is followed by civil as well as penal consequences, the

procedure prior to pronouncement needs to be followed strictly.

7. Prior to invoking Section 82 Cr.P.C., the Courts must have reasons to believe that the person against whom warrant has been issued has absconded or is concealing himself with an intent to defeat execution of such warrants. A belief can be said to be founded on 'reasonable grounds' only when there is something cogent to justify the same. The expression 'reasonable grounds' has been dealt by Supreme Court in '**Chenna Boyanna Krishna Yadav Vs. State of Maharashtra**', (2007) 1 SCC 242 to connote as under :

“13. xxxxxxxx The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provisions requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction xxx”

(emphasis supplied)

8. Thus prior to resorting to Section 82(1) the belief of the Court based upon the reasons is *sine qua non* and must be reflected from the records and order. Only on the satisfaction of the said ingredient, the Court should publish a written proclamation requiring the wanted person to appear at a specified place and at a specified time. The provision further mandates that time specified should not be less than 30 days from the date of publication of proclamation. Section 82(2)(i) prescribes following

modes of publication :

- (a) It must be publicly read in some conspicuous place of the town or village where such person ordinarily resides;
- (b) The proclamation must be affixed at some conspicuous part of the house or homestead or town or village which is ordinarily place of residence of such person; and
- (c) Copy of proclamation should also be affixed at some conspicuous part of the Court.

9. Section 82(2)(ii) further prescribes that if the Court thinks fit it may also direct copy of the proclamation to be published in a daily newspaper circulating at the place where such person ordinarily resides.

10. While all modes of publication as prescribed under Section 82 (2)(i) need to be mandatorily complied with, mode of publication as prescribed under Section 82(2)(ii) i.e. publication in newspaper is subject to the opinion of the Court deeming it fit.

11. Section 82(3) further prescribes that publication of proclamation as prescribed under Section 82(2)(i) is the conclusive evidence that the requirements of the section have been complied with. It is thereafter, the Court may, after making inquiry w.r.t. compliance of the procedure as contemplated under Section 82(2) pronounce a person to be a Proclaimed Offender/Person and make a pronouncement to that effect under Section 82(4).

12. In the present case proclamation was issued on 21st of May,

2016 requiring the petitioners to appear before the Court on 18th of July, 2016 but as per the statement made by concerned official the same was published as prescribed under Section 82(2)(i) only on 16th of July, 2016. Meaning thereby that the mandatory requirement of granting 30 days to the person to appear before the Court stands violated and further since the modes of publication as prescribed under Section 82(2)(i) have not been complied with, this Court finds that the impugned order dated 16th of August, 2016 declaring the petitioners to be a proclaimed offender cannot be sustained and is hereby set aside.

- 13. The petitions are allowed accordingly.
- 14. A copy of this order be kept on the files of other connected cases.

August 23, 2023		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No