

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

CRM-M-13470-2023 (O&M)

Date of decision: 29.08.2023

Ramanjot Singh

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Hitesh Verma, Advocate for the petitioner

Mr. Aditya Kapoor, AAG, Punjab

AMAN CHAUDHARY, J

1. The present petition has been filed for quashing of impugned order dated 21.07.2017, Annexure P-5, passed by Chief Judicial Magistrate, Barnala, in case FIR No.127, dated 01.12.2015, registered under Sections 382, 506 and 34 IPC and Sections 25 & 27 of Arms Act, 1959, at Police Station Dhanaula, District Barnala vide which the petitioner has been wrongly declared proclaimed offender and all other consequential proceedings arising therefrom.

2. Learned counsel contends that the petitioner was arrested in case FIR No.127, dated 01.12.2015, registered under Sections 382, 506 and 34 IPC and Sections 25 & 27 of Arms Act, 1959, and was granted regular bail on 15.12.2015. Thereafter, he continued to appear regularly before the trial Court, but for 20.09.2016, when he could not appear due to the fact that he was involved in another case in the State of Uttar Pradesh. This led to initiation of proclamation proceedings against him vide order dated 04.05.2017, Annexure P-2, whereby he was directed to appear before the trial Court on 31.05.2017. On the said date, statement of the officer, who had effected proclamation process was recorded,

Annexure P-3, wherein he had stated that on 09.05.2017, the proclamation was affixed at his house, since the petitioner was not found there and the matter was adjourned to 21.07.2017, and vide order of even date he was declared a proclaimed offender, Annexure P-5. On this basis, impugned FIR No.24 dated 20.02.2020 was registered under Section 174A, IPC against him, where he was arrested and granted regular bail vide order dated 17.08.2020. The procedure mandated under Section 82 CrPC had not been followed, as the petitioner was declared proclaimed offender without affording him the prerequisite time period of 30 days to appear before the trial Court, for which reference is made to order dated 31.05.2017, wherein the case was adjourned to 21.07.2017, since the mandatory period of 30 days had not elapsed. In this regard, reliance is placed upon judgments in the cases of CRM-M-29878-2022, **Sardar Singh and another vs. State of Punjab and another**, decided on 30.08.2022, **Uttam Sharma vs. State of Punjab and another**, CRM-M-31481-2021, dated 29.09.2021 and **Ashok Kumar vs. State of Haryana and another**, CRM-M-13638-2013, decided on 05.08.2013. Moreover, the petitioner has been acquitted in the main case by the trial Court vide order dated 13.03.2023.

3. Learned State counsel on the other hand submits that the order passed against the petitioner is legal and valid on account of the fact that he had absented from the proceedings before the trial Court without any just cause.

4. Heard

5. It is apposite to refer to the provisions of Section 82 (1) Cr.P.C. which reads thus:-

“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) xx xx xx xx

(3) xx xx xx xx”

6. In the present case, proclamation was issued on 04.05.2017 and thereafter, affixation of the notice was on 09.05.2017, whereby he was directed to appear before the Court on 31.05.2017. Since, the mandatory period of 30 days to appear before the Court had not elapsed, the case stood adjourned to 21.07.2017, for the period to be completed, which is in teeth of the law laid down in that regard. A gainful reference can be made to the judgment in **Ashok Kumar** (supra), relevant para of which reads thus:

“A copy of the proclamation was also affixed at conspicuous part of the Court house, which means that the publication was effected on 9.2.2013 for 6.3.2013, which shows that after the publication of the notice, the accused was not given the mandatory period of 30 days to appear before the Court. The mere fact that the Court adjourned it after the period of 30 days will not be treated as compliance of the provisions of Section 82 (1) Cr.P.C.”

7. The aforesaid judgment was relied upon in **Uttam Sharma** (supra), wherein the order of proclamation was set aside, as a clear 30 days time from the date of publication was not afforded before issuing absconding warrant against the accused as per the statutory provisions of Section 82 CrPC.

8. The accused-petitioner had been acquitted of the charges framed against him in the main case vide judgment dated 13.03.2023 passed by the trial Court, the proceedings from which he had absented leading to he having been declared proclaimed offender, the relevant paras whereof read thus:

“14. The star/main witnesses i.e. PW1 Prem Kumar, PW2 complainant Hardev Singh and PW8 Jagraj Singh were declared hostile at the request of APP for the State and cross examined by the APP but even then during their cross examination, nothing favourable to the prosecution could be elicited that may connect the accused with the present

occurrence so as to infer that it was the accused who perpetrated the offence of causing injuries.

15. Since there was no incriminating evidence on record to be put to accused persons for their explanations, therefore, the recording of his statement under Section 313 Cr.P.C, was dispensed with.

16. As a result of the discussion made above, the prosecution has failed to prove its case against the accused persons beyond any shadow of doubt. Consequently by giving benefit of doubt, accused persons as named above are acquitted of the charges framed against them. Their bail bonds and surety bonds stands discharged. File be consigned to the record room. Pronounced in Open Court.”

9. In view of the above discussion, this Court finds that the requisite procedure as mandated by Section 82 CrPC was not completely followed in letter and spirit, thus, the continuation of proceedings would be an abuse of the process and deserve to be quashed, as held in **Ramesh Chandra vs. State of U.P.**, 2022 SCC OnLine SC 1634. As such, the present petition is allowed. Impugned order dated 21.07.2017 as also the consequential proceedings arising therefrom are hereby set aside.

29.08.2023
Ankur

(AMAN CHAUDHARY)
JUDGE

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