

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

CRM-M-2250-2017

DATE OF DECISION:-02.02.2023

Dinesh

...Petitioner.

Vs.

State of Haryana

...Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Aditya Sanghi, Advocate,
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARKESH MANUJA, J. (ORAL)

By way of present petition under Section 482 Cr.P.C., prayer has been made for quashing of order dated 23.12.2016 passed by the court of learned Judicial Magistrate Ist Class, Tohana, whereby the petitioner has been declared proclaimed offender in a complaint case No.RBT-103 dated 15.06.2012, under Sections 302, 218, 167, 195, 120-B IPC, Police Station Sadar Tohana, followed by registration of FIR No.28 dated 10.01.2017, under Section 174-A IPC, Police Station Sadar Tohana.

The facts of the present case are that a complaint was made at Police Station Sadar Tohana regarding a missing boy, namely Rajinder. On inquiry, the investigating agency was of the opinion that no cognizable offence was made out and as such, no FIR was registered in pursuance thereof, compelling the father of the aforementioned boy, to file a criminal

complaint dated 15.06.2012 in the Court of learned Sub-Divisional Judicial Magistrate, Tohana, District Fatehabad, implicating 8 persons including the present petitioner.

The above-mentioned 8 persons were ordered to be summoned by the court of learned Judicial Magistrate Ist Class, Tohana vide order dated 27.07.2016. On account of non-appearance before the court, the petitioner was declared as proclaimed offender vide order dated 23.12.2016, besides registration of FIR No.28 dated 10.01.2017, under Section 174-A IPC at Police Station Sadar Tohana.

Challenging the order dated 23.12.2016 as well as the FIR dated 10.01.2017, learned counsel for the petitioner submits that the proclamation allegedly effected against the petitioner for the purpose of securing his presence before the court concerned was in violation of Section 82 Cr.P.C. While referring to zimni orders (Annexures P-7 and P-8), learned counsel further submits that the proclamation under Section 82 Cr.P.C. was ordered by the trial court on 17.11.2016 with 23.12.2016 to be the date fixed for the appearance of petitioner. He further submits that a perusal of the statement of the serving Constable, which was recorded on 29.11.2016, reveals that the petitioner was not even present at the given address as his house was found locked and thus, the said proclamation could not have been made the basis for declaring him to be a proclaimed offender.

On the other hand learned State counsel opposes the prayer made on behalf of the petitioner and prays for dismissal of the present petition while submitting that the mandatory procedure under section 82(1) of Cr.P.C. was duly complied with by the Trial Court.

I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

Statement of EASI Sumer Singh No.873, Police Station Sadar Rohana, which was recorded by the trial court on 29.11.2016 has some relevance upon the merit of the case and thus, the same is reproduced as under:-

“On S.A. stated that for the publication of proclamation on 22.11.2016 along with chowkidar went to the house of Dinesh s/o Mulak Raj Village Bosti, his house was found locked. Neighbors told on inquiry that he has gone out of station for labour work. A copy of proclamation was affixed on the door of accused and other copy of publication was posted at common place in the village. Third copy of publication was affixed on notice board of Hon'ble Court. Proclamation was done through chowkidar in the village and the original copy of publication is present before the Hon'ble Court.”

A perusal of the aforesaid statement clearly shows that at the time of publication of proclamation on 22.11.2016, admittedly, the house of the petitioner in village Bosti Tehsil and District Fatehabad was found locked.

In the facts and circumstance of the present case, the Trial Court instead of proceeding further should have at least given one more chance to the petitioner, to be served in accordance with section 82(2)(ii) of Cr.P.C., before declaring him as proclaimed offender.

A coordinate bench of this court in case titled as **“Rahul Dureja and another vs State of Punjab”** in CRM-M No. 51385 of 2021, held that in absence of any “mens rea” for the commission of an offence under Section 174-A of the IPC, compliance of procedure stipulated in

82(2)(ii) does not remain directory and it becomes imperative to comply with the same. Relevant para of the judgment is being reproduced below:

“7. Be that as it may, even the impugned order (supra), hence suffers from a vice of infirmity. Conspicuously, since the mens rea for the commission of an offence under Section 174-A of the IPC, arises only, when the completest compliance, rather becomes meted with the peremptory statutory injunctions carried, in the entire component(s) of sub-sub-Section (i) of sub-Section (2), of section 82 of the Cr.P.C., 1973 whereas, when for reasons (supra), a segment thereof remains uncomplied. Therefore, It was rather imperative, for the learned trial Magistrate concerned, to thereafter recourse the mandate of sub-Section (ii) of sub-Section (2) of section 82 of Cr.P.C., 1973 inasmuch as, after his receiving the report of the executing officer, his proceeding, to make an order for publication of the proclamation notice, in the daily newspaper, hence circulating in the area in which the accused ordinarily reside(s). The learned Magistrate, however, did not after the afore deficit report of the executing officer, being made, recourse the mandate of sub-Section (ii) of sub-Section (2) of section 82 of Cr.P.C., 1973 Consequently, the deficit report of the executive officer could not validly bedrock any further conclusion, that the petitioners ever nursed any penally inculpable, mens rea, for an offence under Section 174-A of the IPC.”

Though, in general, compliance with section 82(2)(ii) of Cr.P.C. is directory in nature, but in cases like present one, where from the proclamation report it cannot be satisfactory concluded that accused was deliberately avoiding the proceedings of the court, recourse to this option was imperative for the Trial Court. This was even accentuated from the fact that petitioner was able to sufficiently explain his absence, in the wake of information placed on record, which was obtained by him vide letter dated 29.08.2017, showing that at the relevant point of time w.e.f. 01.11.2016 to 30.11.2016, the petitioner was working as Gunman with the then Sessions

Judge, Jind. The aforesaid information placed on record at the instance of the petitioner has gone un rebutted, there being no counter to the same having been filed at the instance of the respondent-State. The relevant extract from letter/information dated 29.08.2017 (Annexure A-1) is reproduced hereunder for reference:-

“In the abovesaid matter your application has been received in this office on 21.08.2017. The information

demande d by you was got from Sena Clerk DPO Jind. As per that record since Ist November 2016 to 30th November 2016 you are posted as gunman of Sessions Judge Jind and as per record during the said period you did not take any earned leave or casual leave.”

In view of the aforementioned facts and circumstances wherein the petitioner was posted as Gunman with the then Sessions Judge, Jind on the relevant date i.e. 22.11.2016, he could not have been declared as proclaimed offender on the basis of affixation of proclamation upon his house in village Bosti, District Fatehabad, which was even otherwise found locked. The order of declaring someone to be a proclaimed offender has serious consequence as regards his personal liberty and thus, the procedure laid down under Section 82 Cr.P.C. becomes mandatory and inviolable, thus needs to be strictly followed.

A Single Judge Bench of Delhi High Court in "**Dalmia Resorts International Pvt. Ltd v. Deepak Gupta and Anr. reported as 2002 SCC OnLine Del 538**" observed that the process of proclamation and attachment are exceptional remedies and should not be issued as a matter of course whenever the warrant is returned unexecuted and the non- conformance of Section 82(1) and (2) would be in violation of the procedure established by

law within the meaning of Article 21 of the Constitution of India. Placing reliance on this judgment, another bench in "**Mohd. Imran vs State (Govt. Of Nct Of Delhi)**" dated 29.03.2022 in CRL.M.C. 900/2021 & CRL. M.A. 4511/2021, observed that the issuance of process under Section 82 Cr.P.C. and pronouncing a person as 'proclaimed person' or PO entail serious consequences, including not only deprivation of personal liberty of a person, but also attachment of properties and initiation of proceedings under Section 174A IPC against such person, therefore, any order to that effect must reflect satisfaction of the Court that the person concerned has absconded or is concealing himself to avoid the process of law.

I find myself in complete conformity with the abovementioned judgments of the Delhi High Court. Any statutory procedure affecting the personal liberty of an individual has to be given a strict compliance to bring it in accordance with the mandate of "**procedure established by law**" as envisaged in Article 21 of Constitution of India. Therefore, before proceeding against a person under section 174-A IPC, not only the Court should have sufficient reason to believe that the person has absconded or is concealing himself so that warrant cannot be executed, but the court is also expected to ensure that procedure as contemplated under section 82(2) Cr.P.C. has been meticulously complied with.

More than that, once it was found that house of the petitioner situated in village Bosti was lying locked, no order of declaring him as proclaimed offender could have been passed by the trial court. My aforesaid view has also been derived from the decision of this Court passed in "**Rahul**

Dureja and another vs. State of Punjab, reported as 2022(1) Law Herald

219. Relevant portion of paragraph 6 of the aforesaid judgment is reproduced hereunder for reference:-

“6.....However, though the serving executing officer has in his report, made a disclosure that he had on finding, the house of the accused to be locked, at the relevant time, hence affixed, one copy of 4 of 6 the proclamation on the main gate of the house of the accused, and, also made disclosure, that one copy of the proclamation became appended, at the Kotkapur Road near Temple, and, besides one copy became appended at the Judicial Court complex. However, a reading of the afore report, does not disclose, that he had also, as enjoined by the provisions (supra), read it publicly in some conspicuous place of the town or village, in which the accused ordinarily resides. Since the mandate of sub-Clause (a) of sub-sub- Section (i) of sub-Section (2) of the [Section 82](#) of the Cr.P.C., was also to be complied alongwith compliance being meted by the executing officer with Clause (b), and, Clause (c) of sub-sub-Section (i) of sub-Section (2) of [Section 82](#), of the [Cr.P.C.](#), whereas, a reading of the apposite report, not disclosing that he had also meted compliance to Clause (a) of sub-sub- Section (i) of sub-Section (2) of [Section 82](#), of the [Cr.P.C.](#), thereupon, his report is in departure of the statutory injunction, as there through, became cast upon him. Consequently, the knowledge of the proclamation notice, was not hence completely acquired by the petitioners, and, also the endeavour of the executing officer to serve the proclamation notice, upon the accused, is completely deficit on score (supra).”

Additionally, it is also required to be taken into consideration that the petitioner has already joined the proceedings in the complaint in pursuance to the summoning order dated 27.07.2016, in the wake of order dated 24.01.2017 passed by this Court and has already been granted the concession of regular bail by this Court vide order dated 18.05.2017 passed in CRM-M-7836-2017. Resultantly, finding merit in the present petition, the same is allowed and the impugned order dated 23.12.2016 passed by the court of learned Judicial Magistrate Ist Class, Tohana, including all the consequential proceedings arising there from which includes FIR No.28

dated 10.01.2017, under Section 174-A IPC, Police Station Sadar Tohana
against the petitioner, are hereby quashed.

02.02.2023
sonika

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned:	Yes/No
whether reportable:	Yes/No