

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

(121)

**CRM-M-22967 of 2023
DATE OF DECISION:-08.05.2023**

Tamanjit Singh Sidhu @ Tamandeep Singh

...Petitioner

vs.

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ravi Chadha, Advocate, for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

HARKESH MANUJA, J.

(1) By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973, prayer has been made for quashing of the impugned order dated 01.03.2023 (Annexure P-10) passed in criminal complaint case bearing Complaint No.COMI/81/2019 Dated 07.11.2019 whereby, the petitioner has been declared as proclaimed person.

(2) Having been arrayed as one of the accused in criminal complaint No.COMI//81/2019 dated 07.11.2019, the petitioner was summoned vide order dated 02.11.2022 passed by the Court of Judicial Magistrate First Class, Dasuya. On account of his non-appearance before the trial Court in pursuance to the aforementioned summoning order, the petitioner was declared as proclaimed person vide order dated 01.03.2023 passed by the Court of Judicial Magistrate Ist Class, Dasuya.

(3) Learned counsel for the petitioner submits that aforesaid order has been passed without following the mandate of Section 82 Cr.P.C. as no proclamation was ever ordered or effected against the petitioner. He further

submits that the petitioner was not even in India as he being employed in Merchant Navy on the rank of Seafarers departed on 20.05.2022 and arrived on 25.01.2023. In view of the aforesaid, learned counsel submits that the impugned order passed by the trial Court was wholly vitiated.

(4) On the other hand, learned State counsel submits that petitioner was having complete knowledge about pendency of the proceedings pending against him but has been deliberately avoiding his presence before the trial Court so as to delay the proceedings.

(5) 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.

(6) In the present case, the petitioner was declared as proclaimed person on account of his non-appearance vide order dated 01.03.2023. The relevant portion thereof reads as under:-

“.....Today the case was fixed the awaiting presence of the accused no.4 Tamanjit Singh Sidhu. Case called several times since morning, but none has come present on behalf of the accused No.4. Statutory period of 30 days from the date of the publication of the accused has already been elapsed. Accordingly, the accused is hereby declared as proclaimed person. Necessary intimation in this regard be issued to the concerned police station.....”

(7) A perusal of the aforesaid order shows that the petitioner was declared as proclaimed person on account of his non-appearance before the Court concerned in pursuance to expiry of 30 days from the date of publication whereas in fact the perusal of the zimni orders appended along with present petition which have not been disputed by the learned State counsel clearly show that no proclamation as contemplated and prescribed

under Section 82 Cr.P.C. was ever issued against the petitioner by the trial Court as the only order passed against the petitioner on the previous date was for effecting service upon him through publication in the Daily Tribune newspaper. The aforesaid order dated 15.12.2022 is reproduced hereunder:

“An application for effecting the service of the accused No.4 through publication has been filed. The said application is accompanied by the affidavit. Accordingly, the application is allowed.

Accused No.4 is ordered to be summoned through substituted service of the publication in daily Tribune Newspaper for 19.01.2023 on filing of publication expenses within 7 days”

(8) In the absence of there being any proclamation made in pursuance to Section 82 Cr.P.C for securing presence of petitioner before the trial Court, his declaration as that of proclaimed person has been done in violation of the statutory procedure prescribed in law which in fact regulates the liberty of an individual and is thus, mandatory and inviolable. The trial Court while passing the impugned order even failed to take into consideration that the order of declaration of an individual as proclaimed person under Section 82 Cr.P.C. has to precede a proclamation giving 30 days clear period for putting in appearance before the Court and the proclamation has to specifically and categorically reflect that the same was being made under Section 82 Cr.P.C. and in case of non-appearance in pursuance thereof, the person shall be declared as proclaimed person/proclaimed offender. In the present case, no such exercise was ever carried out by the trial court before passing the impugned order.

(9) In view of the discussion made hereinabove, the present

petition is allowed and impugned order dated 01.03.2023 (Annexure P-10) is hereby set aside. Keeping in view the aforesaid facts, the petitioner is directed to appear before the trial Court within a period of two weeks from today and furnish his bail bonds/surety bonds which shall be accepted by the trial Court to its satisfaction.

(9) The aforesaid order shall however, be subject to payment costs of Rs.5,000/- to be deposited with the Punjab and Haryana High Court Association Lawyer’s Family Welfare Fund having Account No.41564846387 with State Bank of India, High Court Branch, Chandigarh, within a period of two weeks from today.

08.05.2023
anil

(HARKESH MANUJA)
JUDGE

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