

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(241) CRM-M-21283 of 2019 (O&M)
DATE OF DECISION:-13.03.2023

Inderjeet Singh @ Joga ...Petitioner

vs.

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Saurabh Khurana, Advocate, for the petitioner.

Mr. V. K. Gupta, AAG, Punjab.

HARKESH MANUJA, J.

By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner prays for setting aside of the order dated 22.11.2016 (Annexure P-1) passed by JMIC, Amritsar, whereby, he was declared as proclaimed person in case FIR No.103 dated 22.10.2012 (Annexure P-3) registered at Police Station Kathu Nanagal, District Amritsar under Section 420 IPC.

Having been implicated in the aforementioned FIR, petitioner was granted concession of regular bail and thereafter, continued to appear before the trial Court, but for 08.09.2015 when his bail bonds were cancelled, surety bonds forfeited followed by issuance of non-bailable warrants against him on account of his non-appearance before the Court below. Having failed to effect service upon the petitioner through the process of bailable/non-bailable warrants, proclamation under Section 82 Cr.P.C. was issued against him vide order dated 16.09.2016 passed by JMIC, Amritsar, for requiring him to appear before the Court on 13.10.2016. The proclamation as ordered by the trial Court was effected on 12.10.2016 for

13.10.2016 and on account of non-appearance of the petitioner before the trial Court on the said date i.e. 13.10.2016, he was declared as proclaimed person vide order dated 22.11.2016 which has been impugned by way of present petition.

Learned counsel for the petitioner submits that the proclamation under Section 82 Cr.P.C. was issued in the present case vide order dated 16.09.2016 and was effected on 12.10.2016. Referring to the orders dated 22.11.2016 (Annexure P-1) and order dated 16.09.2016 (Annexure P-4), learned counsel for the petitioner submits that the proclamation was effected on 12.10.2016 for appearance on 13.10.2016 thereby offering only one day to the petitioner to appear before the trial Court which in fact was in violation of Section 82(1) Cr.P.C. as the same specifies grant of period of 30 days for appearance from the date of publication of the proclamation.

On the other hand, the prayer made herein has been opposed by learned State counsel while submitting that non-appearance of the petitioner was wholly intentional and *mala fide*. He further submits that despite having knowledge about the proceedings pending before the trial Court, the petitioner deliberately chose not to appear so as to avoid the proceedings pending against him.

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.

A perusal of Section 82 Cr.P.C., makes it clear that the written proclamation has to provide a clear period of 30 days from the date of its publication for appearance before the Court concerned. In the present case, a conjoin reading of orders dated 16.09.2016 and 22.10.2016, makes it clear that the proclamation ordered on 16.09.2016 was effected on 12.10.2016 for

13.10.2016 as the date of appearance, thereby giving only one clear day to the petitioner so as to put his appearance before the Court concerned which clearly fell short of the statutory period of 30 days as required to be provided for appearance in pursuance to the proclamation ordered under Section 82(1) Cr.P.C. In fact Section 82 Cr.P.C., stems from Article 21 of the Constitution of India as the same regulates the personal liberty of an individual which can only be taken away in accordance with the procedure established by law and thus, makes it mandatory and inviolable.

In view of the discussion made hereinabove, present petition is allowed and order dated 22.11.2016 (Annexure P-1) whereby, the petitioner was declared as proclaimed person on the basis of proclamation effected on 12.10.2016 for 13.10.2016 being violative of Section 82(1) Cr.P.C. is set aside.

Petition allowed.

13.03.2023
anil

(HARKESH MANUJA)
JUDGE

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