

2023:PHHC:086426

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM M-28979 of 2023

Date of Decision: July 07, 2023

Balbir Singh Gill

...Petitioner

Vs.

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Sunil Chadha, Senior Advocate with
Ms. Taanvi Dhull, Advocate
for the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. By filing the instant petition, the petitioner has laid challenge to the order dated 25.11.2008 (Annexure P-7) passed by the Court of learned Judicial Magistrate 1st Class, Hoshiarpur, vide which, the petitioner was declared as proclaimed offender in case FIR No. 0127 dated 13.06.2007 under Sections 420 and 406 IPC registered at Police Station Police Station Mahilpur, District Hoshiarpur (Annexure P-1).

2. The FIR in the instant was got registered by Harpal Singh son of Mahinder Singh resident of village Nangal Salagdi, Police Station Una, Himachal Pradesh against the present petitioner and others on 13.06.2007, on the basis of a complaint submitted by him to the police on 20.03.2007. Since the allegations levelled by the

complainant in the FIR and the factual controversy are not disputed in the present case, consequently, the same are not reproduced in the present order for the sake of brevity of the matter.

3. The learned senior counsel vehemently argued that the present petitioner is a citizen of United States of America, who has filed the present petition through his special power of attorney. The petitioner came to India on 04.09.2006 and left back on 14.03.2007. On 20.03.2007, the complainant moved an application against the present petitioner for registration of the FIR and after holding some preliminary inquiry, the FIR (Annexure P-1) was ordered to be registered on 13.06.2007 against the petitioner and others under Sections 406 and 420 IPC. He vehemently argued that the FIR was registered at the back of the petitioner and no notice was ever served on him. In support of the said contention, the learned senior counsel referred to the Registration report under The Registration of Foreign Rules 1939 (Annexure P-2) and the residential permit (Annexure P-3) issued under the Foreigners Order, 1943. The learned senior counsel also relied upon the old and new passports of the petitioner, which are annexed as annexures P-4 and P-5, respectively, to contend that the relevant entries in the passport would clearly establish that he left finally on 14.03.2007 and did not return to India thereafter. The learned senior counsel further submitted that in the present case, no efforts were made to serve the petitioner personally. HC Raju No. 468, Police Station Mahilpur, was appointed by the trial Court to

publish the proclamation in the present case. The aforesaid police official went to the village of the petitioner and could not find him. Ultimately, he came to know from Santokh Singh Panch that petitioner had left for America and he had affixed the proclamation on the gate to the house of the petitioner, which was also closed. The statement of HC Raju No. 468 has been annexed as annexure P-6, as per which, he had affixed the notice at the conspicuous part of the village and one copy was put on the notice board of the Court. Later on, by relying upon the said report, the present petitioner was declared as proclaimed offender illegally in view of Section 82(4) of the Cr.P.C. Learned senior counsel vehemently argued that while passing the impugned order, the trial Court had completely overlooked the mandatory provisions of Sections 82 and 105 of Cr.P.C. and the impugned order is legally unsustainable.

4. Pursuant to the notice issued by this Court, a status report by way of affidavit of the Deputy Superintendent of Police, Sub-Division Garhshankar, District Hoshiarpur has been filed on behalf of the respondent-State and the same has been taken on record. It has been mentioned in the said report that the applications dated 20.03.2007 and 09.09.2007 were moved against the petitioner and others to the Senior Superintendent of Police, Hoshiarpur and ultimately FIR No. 0127 under Sections 420 and 406 IPC registered at Police Station Police Station Mahilpur, District Hoshiarpur (Annexure P-1) on 13.06.2007 against the present petitioner. It was

stated that since the petitioner did not join the investigation, he was declared as proclaimed offender on 25.11.2008 by the trial Court. After completion of the investigation, the challan of PO was submitted in the trial Court and the proceedings under Section 299 Cr.P.C. were conducted by the trial Court at Hoshiarpur and the file was ultimately consigned to the record room on 23.03.2010. However, the learned State counsel could not controvert the factual submissions made by the learned senior counsel on behalf of the petitioner. Rather reply submitted by the State of Punjab was silent on the material submissions made by the learned counsel for the petitioner.

5. I have heard learned counsel for the parties and with their able assistance, I have perused the records of the case.

6. In the present case, the first and foremost question, which arises for the consideration of this Court as to whether the trial Court could have declared the petitioner as “Proclaimed Offender” for the offences under Sections 406 and 420 of Indian Penal Code. Another question, which is of equal importance and needs to be answered by this Court is as to whether the trial Court was justified in declaring the petitioner a proclaimed offender without ensuring the personal service of the process of the Court on the petitioner through the Embassy of India and without following the procedure laid down under Section 82 Cr.P.C.

7. A perusal of the provisions of Code of Criminal Procedure would clearly show that word “Proclaimed Offender” has not been defined in the Code. In fact, the word “Proclaimed Offender” appears in Section 40(1)(b) of Cr.P.C., wherein, it has been mentioned that every officer employed in connection with the affairs of the village and every person residing in the village shall forthwith communicate to the nearest Magistrate or to the Officer in charge of the nearest Police Station, whichever is nearer, any information which he may possess respecting any person whom he knows or reasonably suspects, to be thug, robber, escaped convict or proclaimed offender. Section 40(2) Cr.P.C. deals with the expression “proclaimed offender” which includes a person proclaimed as offender by any Court in respect of the offence punishable under Sections 302, 304, 382, 392 to 399, 402, 435, 436, 449, 450 and 457 to 460 IPC. Apart from that, it is also apparent from the provisions of Section 43 of Cr.P.C., that even a private person is empowered to arrest a “proclaimed offender”. Since the controversy in the present case is centered around the mandatory provisions of Section 82 of Code of Criminal Procedure, the same is reproduced below:-

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 Sections 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).]

8. At this stage, it requires mentioned that sub-sections (4) and (5) were also inserted in Section 82 of Cr.P.C. w.e.f. 23.06.2006 vide notification No. S.O. 923(E) dated 21.02.2006. Vide Section 44 of Act No. 25 of 2005, Section 174-A IPC was also brought on the statute book by the Legislature, which provides for the offences, which punish for non-appearance in response to a proclamation under Section 82 of Act No. 2 of 1974 and Section 174-A IPC has been reproduced below for the facility of reference:-

[174A. Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.—Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section [\(1\)](#) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.]

9. From a cumulative reading of the above referred provisions of the Code, it is evident that all the persons, who are

absconding or concealing themselves so that the warrants may not be executed, cannot be declared as proclaimed offender. Only where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under the offences mentioned in Section 82(4) Cr.P.C. and such person fails to appear at the specific place and time required by the proclamation, the Court may pronounce such person as proclaimed offender. However, if the proclamation is respecting the offence, other than the offences mentioned in Section 82(4) Cr.P.C., then such persons, who are absconding and concealing themselves to affect the execution of warrants of arrest, could be declared as proclaimed persons. From a plain reading of the provisions of Section 82 of Cr.P.C., it is evident that there is a distinction between a proclaimed person and a proclaimed offender. The said distinction is further reinforced by the provisions of Section 174-A IPC. As per Section 174-A IPC, if a person is declared as “proclaimed person” then he shall be punished with imprisonment for a term, which may extend to three years and or fine or both and where a declaration has been made in sub-section 4 of Section 82 Cr.P.C. pronouncing him as a “proclaimed offender”, he shall be punished with the imprisonment for a term which may extend to seven years and shall also be liable to fine. Thus, from the scheme of Code itself, it is evident that the words “Proclaimed Person” and “Proclaimed Offender” have different meanings and different punishments have been provided under the statute for the said

violation of law. Even similar observations have been made by this Court in the matter of Satinder Singh Vs. The State of U.T., Chandigarh and another, 2011(2) R.C.R. (Criminal) 89.

10. From the above referred discussion, it is evident that the trial Court had wrongly declared the petitioner as proclaimed offender. In the present case, the FIR was got registered by complainant under Sections 406 and 420 IPC. Even, the police conducted the investigation and the final report was also presented against the petitioner with regard the said offences only. Consequently, it is apparent that Section 406 and 420 IPC are not mentioned in Section 82(4) Cr.P.C. Thus, the learned trial Court could have at the worst declare the petitioner as “Proclaimed Person” and not “Proclaimed offender”. Thus, the impugned order suffers from a serious legal infirmity and is liable to be set aside on this ground.

11. Still further, from the statement made by the learned senior counsel on behalf of the petitioner, it is clear that the petitioner is a citizen of India. He came to India on 04.09.2006 and returned on 14.03.2007. From the registration report (Annexure P-2), residential permit (Annexure P-3), both the passports (Annexures P-4 and P-5), it is clear that after 14.03.2007, the petitioner never returned to India whereas it is also admitted case of the parties that the complaints in the present case against the petitioner were moved on 20.03.2007 and 09.09.2007 to the Senior Superintendent of Police, Hoshiarpur and ultimately the present FIR No. 127 under Sections 406 and 420 IPC

was registered on 13.06.2007 in Police Station Mahilpur, District Hoshiarpur, at the back of the petitioner. The above referred factual submissions could not be controverted by the learned State counsel. Furthermore, even during the process to compel the appearance of the petitioner before the Investigating Agency or the Court, it came forth that the petitioner was residing in United States of America. In such a situation, it was mandatory for the Investigating Agency to effect a valid personal service on the present petitioner through Embassy of India, located in United States of America. Even, the police/trial Court could have ensured the service of summons/warrants by following the process as provided under the provisions of Sections 81, 82 and 105 Cr.P.C. However, from the record, it is apparent that no such procedure was followed and the evidence in this regard is grossly amiss.

12. As a sequel to above discussion, the effect of not taking recourse to the procedure as established by law is that the impugned order (Annexure P-7) whereby the present petitioner was declared as proclaimed offender, is quashed and is set-aside.

13. At this state, the learned senior counsel made a request that the petitioner is willing to come to India in next 15 days and wish to join the process of law by surrendering before the learned trial Court/Area Magistrate. I find the request to be genuine and the same is liable to be accepted. As per the reply submitted by the learned State counsel, the FIR in the instant case was registered on

13.06.2007 and after investigation of the case, the challan was already presented in the learned trial Court and the proceedings under Section 299 Cr.P.C. have already been conducted by the trial Court at Hoshiarpur on 23.03.2010 and the file has already been consigned to the record room. Thus, it is evident that no purpose would be served by sending the petitioner behind the bars after such a long period. Consequently, the petitioner is permitted to surrender before the learned trial Court/Area Magistrate/Duty Magistrate within a period of six weeks from today and on his surrender, he shall be admitted to bail by the concerned Court on his furnishing bail bonds/surety bonds to the satisfaction of the concerned Court. The Court, which admits the petitioner to bail, shall also be at liberty to impose such reasonable conditions, as provided by law. In case, the petitioner does not surrender within a period of six weeks from today, the present petition shall be deemed to be dismissed by this Court.

14. The petition is disposed off in above terms.

July 07, 2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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