

242(2) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-31735-2022
Date of Decision: 11.04.2023

Inderbir Singh
...Petitioner
Versus
State of Punjab and another
...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. J.S. Bhinder, Advocate
for the petitioner.

Mr. Madhur Sharma, AAG, Haryana.

Mr. A.S. Dhindsa, Advocate for
Mr. Sukhchain Singh, Advocate
for respondent No. 2.

DEEPAK MANCHANDA J.

This is a petition under Section 482 Cr.P.C. praying for the quashing of the impugned order dated 02.07.2019 (Annexure P-4) passed by the Chief Judicial Magistrate Fatehgarh Sahib in the FIR No.31 dated 19.05.2018 under Sections 420, 406 of IPC registered at Police Station Mulepur, Tehsil and District Fatehgarh Sahib with the further prayer that the petitioner be permitted to join the trial in the aforesaid FIR and in the meantime, the arrest of the petitioner be stayed.

Learned counsel for the petitioner contends that the compromise has already been effected between the parties, which is annexed herewith as Annexure P-2 and on the basis of the same, a CRM-No.3156 of 2022 for

quashing the aforesaid FIR has also been filed which is pending adjudication before this Court. He further contends that the order passed by the trial Court is illegal as petitioner was first proceeded against *ex parte* and thereafter, necessary intimation was sent to the PO Staff and the petitioner was declared proclaimed offender vide order dated 02.07.2019(Annexure P-4).

Learned counsel for the petitioner argues that the petitioner was working as a Mechanic for Harvesting Combines and remained out of station due to his job constraints. In February 2019, he was in Uttar Pradesh and thereafter, the lockdown was imposed and the petitioner could not come back due to said nationwide lockdown and was not aware of passing of impugned order dated 02.07.2019. Thereafter, the matter was compromised on 12.11.2021 and the petitioner remained under the impression that since the matter has now been compromised, so his presence would not be required before the trial Court. Now, he came to know about passing of the impugned order dated 02.07.2019.

Learned State counsel while referring to the reply dated 10.04.2023, admitted the factum of compromise as well as the pendency of the CRM-M-3156-2022 filed for quashing of the FIR based on compromise but submitted that there is no illegality in the order dated 02.07.2019 which has been rightly passed by the trial Court recording continuous absence of the petitioner.

I have heard the counsels for the parties.

The perusal of the impugned order dated 02.07.2019 (Annexure P-4) shows that the same has been passed without application of mind, wherein it is mentioned that statement of serving Constable regarding effect of proclamation against the petitioner was recorded on 31.05.2019 along with his report (Ex.PB) and after elapse of statutory period of 30 days for

awaiting the presence of the accused/petitioner, he was proceeded against *ex parte* which itself is vague, unreasoned and non-speaking which has been passed without any reasoning as to why the petitioner was declared a proclaimed offender and in the criminal law there is no such provision under which the accused can proceed *against ex parte*, the same shows the casualness of the trial Court while passing the said impugned order. Further, the said order indicates that the same was passed without recording any reason of his satisfaction that the petitioner is evading his arrest.

Moreover, as per order dated 29.04.2019, it has been recorded that non-bailable warrants issued against the accused were not received back, even then proclamation was issued for 02.07.2019. This Court finds that before drawing conclusion that the accused is evading his arrest there must be reasonable grounds, which are required to be recorded by the court to its satisfaction that the presence of the accused cannot be secured by summons or bailable warrants and there are valid grounds available on record to presume that accused is willfully evading his arrest.

The reliance is placed on the law laid down by the Hon'ble Supreme Court of India in ***the State of Orissa Vs. Dhani Ram 2004(5) SCC 568.***

"7. Reason is the heartbeat of every conclusion, and without the same it becomes lifeless. (See Raj Kishore Jha v. State of Bihar and Ors. (2003 (7) Supreme 152).

8. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 ICR 120)(NIRC) it was observed: "Failure to give reasons amounts to a denial of justice". Reasons are live links between the mind of the decision-maker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity with objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually

impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons are at least sufficient to indicate an application of mind to the matter before the Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

The next issue is required to be determined in the present case about the issuance of process under Section 82 of Cr.P.C. and the same reads as under:-

"82. Proclamation for a 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 proclaiming 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-section (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).]

Even as per Section 82(1), the proclamation would only be issued if the Court has reasons to believe that the accused has absconded or intentionally concealed himself but the impugned order dated 02.07.2019 (Annexure P-4) does not indicate the compliance of the above provisions where no satisfaction has been recorded and the learned counsel for the petitioner has explained the circumstances under which he remained absent which was also unavoidable due to nationwide lockdown and even in the State's reply nothing as such has been brought into the notice of this Court which shows that the petitioner has absconded or intentionally concealed himself.

A plain reading of Section 82(1) of the Code implies that the Court is first required to record its satisfaction before issuance of process under Section 82 and non-recording of the satisfaction itself makes such order suffering from incurable illegality. This Court is prima facie satisfied that the impugned order dated 02.07.2019 (Annexure P-4) was passed mechanically without following the drill of the procedure prescribed under the Code. There is nothing on record that could remotely suggest that the trial Court has sufficient reasons to believe that the petitioner has absconded or he is intentionally concealing himself to avoid execution of the warrants and such departure from the mandatory compliance of Section 82(1) would render the impugned order (Annexure P-4) unsustainable in the eyes of law and the same is required to be quashed.

Given the factual position of the law, this Court is of the view that the impugned order dated 02.07.2019 (Annexure P-4) has been passed without any recording of the satisfaction about evading of the arrest by the petitioner and his willful concealment. The trial court should have recorded its satisfaction based on material available on record at least by assigning reasons wherein procedure has also not been followed. Moreover, the non-application of mind while passing the order itself is apparent on record where it is mentioned that the accused has already proceeded against *ex parte*.

Consequently, the present petition is allowed and the impugned order dated 02.07.2019 (Annexure P-4) passed by the trial Court is hereby quashed. The petitioner is directed to appear before the trial Court on receipt of certified copy of this order and on doing so, the petitioner would be at liberty to move bail application before the trial Court and the trial Court will decide the same expeditiously, as per law.

(DEEPAK MANCHANDA)
JUDGE

11.04.2023
Ajay Goswami/Sapna

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