

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

CRM-M-37576 of 2020 (O&M)

Date of Decision: 11.05.2023

Naresh Kumar

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Ivan Singh Khosa, Advocate for
Mr. Gautam Dutt, Advocate for the petitioner.

Mr. Randhir Singh, Addl. AG, Haryana.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 of Cr.P.C is to quash FIR No.580 dated 08.10.2020 registered under Section 174-A IPC at Police Station Karnal City (Annexure P.1) and all the consequential proceedings arising therefrom.

2. The petitioner is challenging the validity of the above FIR N: 580 under Section 174-A IPC, contending that it was registered after the termination of proclamation proceedings due to his surrender before the trial Court on 08.10.2020 in case FIR No.736 dated 19.07.2016 registered at Police Station Karnal City under Sections 406/420 IPC. The petitioner's counsel argues that the subsequent registration of the FIR is non-est in the eyes of law since the petitioner had already surrendered before the trial Court on 08.10.2020 pursuant to the interim protection granted by this Court in CRM-M-21741 of 2020, by which petitioner was given an opportunity to surrender. Additionally, the petitioner claims that the FIR under Section 406/420 IPC was falsely registered against him as he had no active role in the Company due to his grave health situation. Furthermore, the petitioner argues that he was not aware of the proclamation proceedings being initiated

against him as he was abroad seeking treatment for his health issues, and that the proclamation proceedings were initiated in violation of Section 82 Cr.P.C. The petitioner's counsel has also referred to various *zimni* orders passed by the trial Court in case FIR No.736 to support the contentions.

3. Respondent – State filed reply by way of affidavit of Shri Veer Singh, Deputy Superintendent of Police, City, Karnal on behalf of the State and defended its action.

4. I have considered the submissions of both the sides and have perused the record.

5. On perusal of the paper book, it is revealed that during the proceedings of case FIR No.736 dated 19.07.2016, as afore-said, warrants of arrest against petitioner Naresh and co-accused were directed to be issued initially vide order dated 01.04.2017 and the said order was repeated on various subsequent dates due to receipt of the warrants of arrest as unexecuted. However, it is important to notice that in none of the orders passed by the trial Court, it is mentioned as to what was the report on the warrants of arrest. As per order dated 03.11.2018, warrants of arrest were received back unexecuted. Request for proclamation under Section 82/83 Cr.P.C was made and so in order to procure the presence of the accused-petitioner, proclamation under Section 82/83 Cr.P.C was directed to be issued for 19.01.2019. On fresh application having been moved for issuance of proclamation, the same was issued vide order dated 05.02.2019 for 10.04.2019. It is revealed further that proclamation was published on 10.04.2019 for appearance/ surrender of the petitioner on 10.05.2019 but file was taken up by the Court on an early date i.e., on 09.05.2019 as learned Presiding Officer had to proceed on leave, and so the matter was adjourned to 05.07.2019. It is vide order dated 05.07.2019 that the petitioner was

declared proclaimed person pursuant to the proclamation having been published on 10.04.2019 and direction was given for registration of the FIR under Section 174-A IPC.

6. It is revealed further that in order to quash FIR No.736 dated 19.07.2016 (afore-said), petitioner had filed CRM-M-21741 of 2020 before this Court and vide order dated 17.08.2020, petitioner was directed to surrender before the trial Court concerned on or before 09.10.2020 and in the meantime, no coercive action was directed to be taken.

7. Pursuant to the afore-said order dated 17.08.2020 of this Court, petitioner surrendered before the trial Court on 08.10.2020 in case FIR No.736 dated 19.07.2016. However, on the same day, i.e., 08.10.2020, the present impugned FIR No.580 under Section 174-A IPC was registered.

8. Having noticed the afore-said facts, this Court finds that FIR in question under Section 174-A IPC deserve to be quashed for the following reasons: -

9. Section 82 of the Code of Criminal Procedure provides the procedure for issuing proclamation for declaring the person as absconding. This is meant to procure the presence of an accused, who is evading the law. Said Section reads as under:-

“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 section 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 subsection (1)."

10. In ***Sonu Vs. State of Haryana – 2021(1) RCR (Criminal) 319***, a co-ordinate Bench of this court has summarized the law on the procedure prescribed under Section 82 Cr.P.C., for declaring the person as proclaimed offender. It was held as under: -

"The essential requirements of Section 82 of the Cr.P.C. for issuance and publication of proclamation against an absconder and declaring him as proclaimed person/offender may be summarized as under: -

*(i) Prior issuance of warrant of arrest by the Court is sine qua non for issuance and publication of the proclamation and the Court has to first issue warrant of arrest against the person concerned. (See ***Rohit Kumar Vs. State of Delhi:****

2008 CrL J. 2561).

(ii) *There must be a report before the Court that the person against whom warrant was issued had absconded or had been concealing himself so that the warrant of arrest could not be executed against him. However, the Court is not bound to take evidence in this regard before issuing a Proclamation under Section 82 (1) of the Cr.P.C.. (See **Rohit Kumar Vs. State of Delhi: 2008 CrL J. 2561).***

(iii) *The Court cannot issue the Proclamation as a matter of course because the Police is asking for it. The Court must be prima facie satisfied that the person has absconded or is concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence. (See **Bishundayal Mahton and others Vs. Emperor: AIR 1943 Patna 366 and Devender Singh Negi Vs. State of U.P.: 1994 CrL LJ (Allahabad HC) 1783).***

(iv) *The requisite date and place for appearance must be specified in the proclamation requiring such person to appear on such date at the specified place. Such date must not be less than 30 clear days from the date of issuance and publication of the proclamation. (See **Gurappa Gugal and others Vs. State of Mysore: 1969 CriLJ 826 and Shokat Ali Vs. State of Haryana: 2020(2) RCR (Criminal 339).***

(v) *Where the period between issuance and publication of the proclamation and the specified date of hearing is less than thirty days, the accused cannot be 4 of 8 declared a proclaimed person/offender and the proclamation has to be issued and published again. (See **Dilbagh Singh Vs. State of Punjab (P&H): 2015 (8) R.C.R. (criminal) 166 and Ashok Kumar Vs. State of Haryana and another: 2013 (4) RCR (Criminal) 550***

(vi) *The Proclamation has to be published in the manner laid down in Section 82 (2) of the Cr.P.C. For publication, the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place*

of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house. The three sub-clauses (a)-(c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. (See Pawan Kumar Gupta Vs. The State of W.B.: 1973 CriLJ 1368). Where the Court so orders a copy of the proclamation has to be additionally published in a daily newspaper circulating in the place in which the accused ordinarily resides. Advisably, proclamation has to be issued with four copies so that one each of the three copies of the proclamation may be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides, to some conspicuous place of such town or village and to some conspicuous part of the Court- house and report regarding publication may be made on the fourth copy of the proclamation. Additional copy will be required where the proclamation is also required to be published in the newspaper.

(vii) Statement of the serving officer has to be recorded by the Court as to the date and mode of publication of the proclamation. (See Birad Dan Vs. State: 1958 CriLJ 965).

(viii) The Court issuing the proclamation has to make a statement in writing in its order that the proclamation was duly published on a specified day in a manner specified in Section 82(2)(i) of the Cr.P.C.. Such statement in writing by the Court is declared to be conclusive evidence that the requirements of Section 82 have been complied with and that the proclamation was published on such day. (See Birad Dan Vs. State: 1958 CriLJ 965).

(ix) The conditions specified in Section 82(2) of the Cr.P.C. for the publication of a Proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the Proclamation and proceedings subsequent thereto a nullity. (See Devendra Singh Negi alias Debu Vs. State of U.P. and another: 1994 CriLJ 1783 and Pal Singh Vs. The State: 1955 CriLJ 318).

11. In addition to above, it is the requirement of law that proclamation should be published for that date on which the person concerned is required to put in appearance/surrender before the court and on his failure to do so, he is declared a proclaimed person/ offender. That date of his appearance/ surrender should not be less than 30 days from the date of publication of the proclamation.

12. In the present case, as has been noticed earlier that proclamation for surrender/ appearance of the petitioner on 10.05.2019 has been published on 10.04.2019 but pursuant to that proclamation, petitioner was not declared as proclaimed offender on 10.05.2019 and rather, the Court at its own adjourned the matter on 09.05.2019 to 05.07.2019. No fresh proclamation was issued for 05.07.2019. Despite the fact that there was no proclamation for 05.07.2019 for appearance/ surrender of the petitioner, he was declared proclaimed person on that day on the basis of proclamation effected on 10.04.2019, which in fact was meant for 10.05.2019. It is, thus, clear that mandatory provisions of Section 82 Cr.P.C were not at all complied with.

13. It is further important to notice that as per the legal position explained in *Sonu's case (supra)*, the Court cannot issue the proclamation as a matter of course simply because Police is asking for the same and rather, the Court must be satisfied that the person has absconded or is concealing himself so that warrants of arrest previously issued cannot be executed despite reasonable diligence. However, in the present case, as has been noticed earlier that Court directed issuance of proclamation vide order dated 03.11.2018 and then vide order dated 05.02.2019, simply on the basis of application moved by the Police, without recording any satisfaction as to whether the petitioner had absconded or was concealing himself and that warrants of arrest issued for him could not be executed despite diligence.

There is no reference in any of the zimni order passed by the trial Court concerned regarding the report received on the warrants of arrest.

14. Learned counsel for the petitioner has drawn attention of this Court towards passport/ visa (Annexure P.14/P.16) revealing that petitioner had left India on 21.07.2016 and returned back to Chandigarh on 23.09.2020. Thus, petitioner being in Dubai and not in India during 21.07.2016 to 23.09.2020, neither the warrants of arrest could be executed upon him nor he could be aware about any proclamation having been issued against him in India.

15. Apart from above, the petitioner had surrendered before the trial Court in case FIR No.736 dated 19.07.2016 on 08.10.2020 during the day time, in compliance of the order dated 17.08.2020 passed by this Court in CRM-M-21741 of 2020. However, the present FIR under Section 174-A IPC has been registered on the same day i.e., 08.10.2020 at 08:57 PM, i.e., when the petitioner had already surrendered in the case, wherein he had been declared proclaimed person.

16. It has been held by this High Court in ***Smt. Deeksha Puri Vs. State of Haryana, 2013(1) R.C.R. (Criminal) 159*** that:

“the moment a proclaimed offender is arrested or he appears at the place and time required by the Court or surrenders before the Court or authority issuing warrants or proclamation, as the case may be, the order of declaration of proclaimed offender would cease to be operative.”

17. Thus, when the FIR was registered under Section 174-A IPC against the petitioner, the proclamation proceedings against him had ceased to operate, on account of his surrender.

18. In fact, the action of the Police in registering FIR under Section

174-A IPC appears to be malafide, inasmuch though the direction had been given by the Court to register the FIR against the petitioner under Section 174-A IPC after declaring him proclaimed person on 05.07.2019 but Police kept silent for a long time and it is only on 08.10.2020 i.e. after a period of more than one year and three months that the present FIR has been registered and that too, when the petitioner had already surrendered before the trial Court in case FIR No.736 dated 19.07.2016 under Sections 120-B, 406 and 420 IPC registered at Karnal City.

19. For all the reasons as have been discussed above, this petition is accepted. FIR No.580 dated 08.10.2020 registered under Section 174-A IPC at Police Station Karnal City (Annexure P.1) and all the consequential proceedings arising therefrom are hereby quashed.

May 11, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No