

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-37803-2023
Date of Decision :- 14.12.2023

Rahul Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr.D.S. Adlakha, Advocate
for the petitioner.

Mr.Munish Sharma, DAG, Haryana.

SUVIR SEHGAL, J. (ORAL)

1. By way of filing present petition under Section 482 Cr.P.C., petitioner is seeking quashing of order dated 06.07.2013, Annexure P6, passed by learned Judicial Magistrate, Jagadhri, whereby petitioner has been declared as a Proclaimed Offender as also FIR bearing No.313 dated 09.06.2023 registered under Section 174-A IPC at Police Station City, Jagadhri, District Yamuna Nagar, Annexure P1.

2. By referring to the statement of the serving officer recorded on 11.05.2013, Annexure P4, counsel submits that although the proclamation was pasted at the residence of the petitioner but it was never read out in the locality. He submits that as the mandatory provision of Section 82 Cr.P.C. has not been complied with, petitioner could not be declared a

Proclaimed Offender and the consequential FIR, Annexure P1 cannot be sustained.

3. Reply by way of affidavit of Deputy Superintendent of Police, Jagadhri, (Yamuna Nagar) has been filed on behalf of respondent – State, which is taken on record. State counsel has opposed the prayer made in the petition and has submitted that the petitioner has approached this Court 10 years after being declared as a Proclaimed Offender.

4. Heard counsel for the parties.

5. Section 82 Cr.P.C. provides 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 sub-section (1)."

6. A perusal of the statement of serving officer shows that as the petitioner/accused was not found at his residence, a copy of the proclamation was pasted outside his residence and another copy was pasted outside the Court premises. However, the proclamation was never

read out at a conspicuous place in the area where the petitioner ordinarily resides. It is, therefore evident that mandatory provision of Section 82 (2) (i) (a), *ibid*, has not been complied with. A similar situation arose before a Co-ordinate Bench of this Court in case titled ***“Ranjit Singh Versus State of Haryana”*** (CRM-M-13413-2022 decided on 08.04.2022) and it was held that the requirement is obligatory and in the absence of its satisfaction, proclamation cannot be said to be effected.

7. Still further, it deserves to be noted that the petitioner was arrested in the criminal case on 09.06.2023 and is in detention. He is before this Court in a separate petition seeking grant of regular bail. As the purpose of initiating proceedings under Section 82 Cr.P.C. is to secure the presence of the accused, once he has been arrested, the objective stands achieved.

8. In view of the above, order declaring the petitioner as proclaimed offender as well as the consequential FIR, cannot be sustained.

9. Accordingly, petition is allowed. Impugned order dated 06.07.2013, Annexure P6, as well as FIR, Annexure P1, are quashed. This will be subject to deposit of cost of Rs.25,000/- with ‘Poor Patient Welfare Fund’, PGIMER, Sector, 12, Chandigarh within a period of four weeks from today.

14.12.2023

Brij

(SUVIR SEHGAL)
JUDGE

Whether reasoned/speaking

:

Yes/No

Whether reportable

:

Yes/No