

**205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-38162-2023****Date of Decision:16.11.2023**

Pargat Singh

...Petitioner

Vs.

State of Punjab and Anr.

...Respondent

Coram : Hon'ble Mr. Justice N.S.ShekhawatPresent: Mr. P.B.S Goraya, Advocate
for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

Mr. Sukhbir Maandi, Advocate
for respondent No.2.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to quash the impugned order dated 22.05.2023 (Annexure P-1), passed by the Court of Judicial Magistrate Ist Class, Tarn Taran, whereby the petitioner was declared as a proclaimed offender in a case arising out of FIR No.97 dated 01.07.2022 under Sections 326,324,323,186,34 of IPC (Section 307 IPC added later on) and under Section 25 and 27 of the Arms Act, registered at Police Station Sarhali, District Tarn Taran (Annexure P-7).

2. Learned counsel for the petitioner contends that in the present case, the FIR was got registered by Ranjodh Singh son of Daan Singh, respondent No.2/complainant against the petitioner, his son Harwinder Singh and wife Joginder Kaur. The son of the petitioner was arrested on 01.09.2022, but he was ordered to be released under Section 167 (2) Cr. P.C on 05.12.2022. The petitioner also prayed for grant of anticipatory bail, however, his bail

application was dismissed by the Court of Sessions Judge, Tarn Taran. Ultimately, on 03.03.2023, the petitioner approached this Court vide CRM-M-11926- 2023 for grant of concession of anticipatory bail, which is even pending today. Learned counsel further contends that vide the order Annexure P-2, the Court of Judicial Magistrate First Class, Tarn Taran issued non-bailable warrants against the present petitioner. On 17.03.2023, the Court had issued proclamation against the present petitioner. On 29.04.2023, again the serving official, who effected the proclamation could not come and the case was adjourned to 22.05.2023 for recording of the statement of the serving official. On 22.05.2023, the following statement of serving official was recorded by the Court of Judicial Magistrate First Class, Tarn Taran:-

“Stated that on 18.03.2023, I was posted at P.S Sarhali, on that day proclamation under Section 82 Cr.P.C of accused Pargat Singh son of Udham Singh, R/o Village Warana, Tehsil Patti, District Tarn Taran, marked to me. On 20.04.2023, I along with other police official PHG Harjinder Singh and Chowikdar Nishan Singh son of Darshan Singh, R/o Village Warana, Tehsil Patti, District Tarn Taran, visited to the house of said accused Pargat Singh son of Udham Singh where I found that the house of accused was locked then I affixed one copy of the proclamation on the door of his house and I affixed one/one copy of proclamation in the common place of address of accused and I affixed one/one copy of the proclamation on the notice board of the Court. I recorded the statement of Chowidar of village Nishan Singh son of Darshan Singh is Ex.PA. Copy of proclamation Ex.PB

and my report is Ex.PC. Same in my hand and bears my signature”.

Thereafter, vide the impugned order dated 22.05.2023 itself, the petitioner was ordered to be declared a proclaimed offender by the Court of Judicial Magistrate First Class, Tarn Taran. Learned counsel for the petitioner submits that the petitioner had been declared proclaimed offender illegally and by completely overlooking the mandatory provisions of Section 82 of Cr.P.C. He has assailed the impugned order, primarily on three grounds which are as follows:-

(a) From a perusal of the statement made by serving official i.e. HC Dilbag Singh, it can be clearly inferred that the proclamation was never “read” at any conspicuous place of the locality and this was a clear violation of the mandatory provisions of Section 82 of Cr.P.C. Learned counsel vehemently argued that any breach of mandatory provisions of Section 82 Cr.P.C cannot be cured as “irregularity” and non-compliance renders the proclamation a nullity.

(b) Learned counsel for the petitioner further vehemently argued that there was nothing on record that the Court had applied its mind regarding being satisfied that the petitioner had intentionally and deliberately concealed himself so that the warrants of arrest cannot be executed despite reasonable diligence. The order was non-speaking and there was no report/material before the Court, which could show that the warrant had been issued and the accused/petitioner had absconded or concealed himself so that the warrants of arrest could not be executed.

(c) Learned counsel further contended that the petitioner has been

wrongly declared as a “proclaimed offender” instead of “proclaimed person”.

As per the settled law, the petitioner/accused could not have been declared as “proclaimed offender” for the alleged commission of the offences under Sections 323,324,326,336,307 IPC and Section 25 of the Arms Act in view of Section 82 (4) of Cr. P.C.

3. Thus, the learned counsel for the petitioner vehemently argued that the impugned order passed by Judicial Magistrate First Class, Tarn Taran was illegally and unsustainable.

4. On the other hand learned State counsel assisted by learned counsel for respondent No.2 have vehemently opposed the submissions made by learned counsel for the petitioner by alleging that in the present case, the prosecution had sufficiently complied with the mandatory provisions of Section 82 of the Cr.P.C, it was apparent that the proclamation was affixed at a conspicuous place as the house of the accused was found locked and there was sufficient publication of the proclamation and the provisions of Section 82 Cr.P.C were complied with. Apart from that, regular raids were conducted by the local police in order to apprehend the petitioner, but he was intentionally hiding himself and could not be arrested, despite, strenuous efforts made by the local police and finding no further alternative the Court was constrained to initiate the proceedings under Section 82 of the Cr. P.C. Learned counsel further vehemently argued that the petitioner was well aware of the PO proceedings and intentionally he evaded the process of law. Consequently, the petitioner is no entitled to any relief from this Court.

5. I have heard learned counsel for the parties and perused the record.

6. In the present case, the arguments raised by learned counsel for the

parties are centered around the mandatory provisions of Section 82 of Cr.P.C, which is reproduced as follows:-

“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.”

However, by way of Section 12 of Act No.25 of 2005, subsections (4) and (5) were also inserted in Section 82 Cr.P.C. w.e.f. 23.06.2006 vide notification No.S.O.923(E) dated 21.06.2006, which reads as under:

“[(4) Where a proclamation published under subsection (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).]”

7. The first submission raised on behalf of learned counsel for the petitioner is that the proclamation has to be published in the manner laid down under Section 82 (2) Cr. P.C in the publication, the proclamation has to be read publicly first in some conspicuous place of the town or the village in which the accused ordinarily resides and then the same has to be affixed to some conspicuous part of the house or the 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 Cr.PC are conjunctive and disjunctive, which means that there would be no valid

publication of proclamation unless all the three modes of publication are proved. 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 courthouse 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. It has been held by this Court in **CRM-M-25921-2020, Decided on 22.09.2020** titled as ***“Harminder Singh Vs. State of Haryana and Anr.***

8. It has been further argued by learned counsel for the petitioner that from a bare perusal of the orders Annexure P-2 and P-3 that the Judicial Magistrate First Class, Tarn Taran had not recorded his satisfaction that in view of the material on record, there was reasonable ground to believe that the petitioner was absconding or concealing himself so that the warrant of arrest issued against him could not be executed. In fact, the Judicial Magistrate first Class, was under the bounden duty to record such a satisfaction, which was a mandatory requirement of law before the issuance of proclamation and since the said requirement was not complied with, the Trial Court was not competent to issue proclamation. In fact, any breach of mandatory provision of Section 82 can never be termed as an irregularity and such non-compliance of has to be viewed seriously by the Courts. I find sufficient force in the submissions made by learned counsel for the petitioner. In the present case, the Court had simply

recorded that despite many endeavors the police could not apprehend the accused and the allegations were grave in nature and the proclamation was issued to be against the accused for 29.04.2023. Thus, the provision of Section 82(1) Cr.P.C had been violated, which mandates the Courts to record a finding that the Court had reasons to believe on the strength of the material before it that another person against whom the warrant had been issued by it, had absconded or was concealing himself so that such warrant could not be executed and such Court might publish a written proclamation requiring him to appear at a specified place and at a specified time not less than 30 days, from the date of publishing such proclamation. Thus, on this count also, the impugned order is liable to be set aside by this Court.

9. Finally, it has been argued that the petitioner has been wrongly declared to be a proclaimed offender in the present case. As per Section 82(4) , Cr.P.C 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 IPC and such person fails to appear at a specified place and time required by the proclamation, the Court may, after making such enquiry as it thinks fit pronounced him a declared offender and make a declaration to that effect. In the present case, the present petitioner was being prosecuted for the offences punishable under Sections 326,324,323,186,34 of IPC (Section 307 IPC added later on) and under Section 25 and 27 of the Arms Act and the said offences do not find mention in Section 82 (4) Cr.P.C.

10. This Court finds sufficient force in the submissions made by learned counsel for the petitioner in this regard. It has been held by this Court in

CRM-M-34328-2011 (O&M) titled as **“Rahul Dutta Vs. State of Haryana”** as follows:-

“Till the amendment by Act No.25 of 2005, proclamation was being done in respect of a person against whom a warrant has been issued and who has been either absconding or concealing himself to evade the execution of warrants but by way of Act No.25 of 2005, in consonance with Section 40(2)(ii), sub-section (4) is made a part of Section 82 Cr.P.C.

The offences mentioned in Section 82(4) Cr.P.C. are of recurring nature. All the persons, who are absconding or concealing themselves to evade execution of warrants of arrest, could be proclaimed persons but they could be declared a “proclaimed offender” only under the provisions of the IPC which are mentioned in Section 82(4) Cr.P.C. There is stark distinction between a proclaimed person and a proclaimed offender and for that reason, there is a difference of punishment provided under Section 174-A IPC as it provides imprisonment which may extend upto three years or with fine or with both regarding a person who has been proclaimed in terms of Section 82(1) Cr.P.C. and the imprisonment which may extend upto seven years and also with fine in respect of a person who is declared a “proclaimed offender” under Section 82(4) Cr.P.C.

I have also minutely examined those sections of IPC mentioned in Section 40(2)(ii) Cr.P.C. and have found that Sections 435, 450 and 457 IPC are not mentioned in Section 82(4) Cr.P.C., whereas Section 364, 367, 400 and 459 IPC are additionally mentioned therein.

Learned counsel for the petitioner has also argued that Sections 83 to 86 Cr.P.C. deal with the proclaimed person and provide a complete procedure with regard to the attachment of his property but it does not deal with a person who has been declared to be a “proclaimed offender”.

Thus, in view of the aforesaid discussion, I am of the considered opinion that the terms “proclaimed person” and “proclaimed offender” have different connotations. A person who is evading the execution of warrants of arrest issued under the particular Sections of the IPC which are mentioned in Section 82(4) Cr.P.C., can only be declared to be a proclaimed offender and the persons under the other provisions of the IPC and the laws, can be declared to

be a proclaimed person in terms of Section 82(1) Cr.P.C.”

11. In view of the above discussion and the law laid down by this Court in the matter of **Rahul Dutta (supra)** the petitioner has been wrongly declared to be a proclaimed offender in the present case.

12. In view of the above discussion, the present petition is liable to be accepted and the impugned order dated 22.05.2023 (Annexure P-1), passed by the Court of Judicial Magistrate Ist Class, Tarn Taran is set aside.

(N.S.SHEKHAWAT)
JUDGE

16.11.2023
hitesh

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