

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

CRM-M-40175-2020 (O&M)

Date of decision: 22.12.2023

Amarjit Singh Doad

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Gurmohan Singh Bedi, Advocate
for the applicant-petitioner.

Ms. Himani Arora, AAG, Punjab.

Mr. Naveen Batra, Advocate
for the complainant.

MANISHA BATRA, J. (Oral)

1. CRM-49232-2023

Prayer in this application is for preponing the date of hearing of the main petition, which is fixed for 09.01.2024.

For the reasons stated in the application, the same is allowed. The main petition is preponed and taken up today itself.

2. CRM-M-40175-2020 (O&M)

The instant petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of order dated 16.07.2018, passed by the Court of learned Judicial Magistrate First Class, Hoshiarpur in case titled as ***State vs. Amarjit Singh Doad***, arising out of FIR No. 88 dated 22.08.2017, registered

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under Sections 406 and 498-A of the IPC at Police Station Mehtiana, District Hoshiarpur, whereby he had been declared a proclaimed person.

3. Brief facts of the case relevant for the purpose of disposal of the present petition are that the petitioner had been nominated as an accused in the aforementioned case and vide order dated 16.07.2018, he was declared a proclaimed person, though he was in Spain at that time. He had never received any notice/summons or warrants at his place of residence in Spain. Neither he was served through Indian Embassy located in Spain. He had continuously remained at Spain with effect from 19.02.2016. The proclamation proceedings were not conducted in accordance with the procedure laid down under Section 82 Cr.P.C. Therefore, prayer has been made by the petitioner for setting aside the impugned order.

4. Learned counsel for the complainant has submitted that a compromise has been arrived at between the petitioner and complainant. A separate petition for quashing of FIR has also been filed by the petitioner, in which the factum of compromise has been brought on record. He has submitted that the complainant has no objection if the order, declaring the petitioner a proclaimed person, is set aside.

5. Learned State counsel, on the other hand, has argued that the petitioner had intentionally and willfully avoided the service of notice/execution of warrants and had absconded in order to face trial and had been declared a proclaimed person after following due procedure of law. Therefore, it is urged that the petition is liable to be dismissed.

6. I have heard learned counsel for the parties at length and have perused the record accordingly.

7. On giving due deliberation to the contentions as raised by learned counsel for the parties and on overall perusal of the orders passed by the trial Court from the date of initiating proceedings under Section 82 Cr.P.C. as against the petitioner till the date of declaring him a proclaimed offender, I am of the considered opinion that the impugned order dated 17.07.2018 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

8. At the outset, it would be relevant to refer to the provision of Section 82 Cr.P.C., which provides for publication of proclamation against the person absconding. It 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

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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).”

9. There are catena of judgment of different High Courts discussing the requirements necessary for issuance and publication of proclamation against an absconder under Section 82 Cr.P.C. and for declaring him as a proclaimed person/offender. These requirements have been discussed from time to time in ***Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561, Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561, Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366, Devender Singh Negi Vs. State of U.P. : 1994 CrL LJ (Allahabad HC) 1783, Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826, Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339, Dilbagh Singh Vs. State of Punjab : (P&H) 2015 (8) R.C.R. (criminal) 166, Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550, Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368, Birad Dan Vs. State : 1958 CriLJ 965, Birad Dan Vs.***

State : 1958 CriLJ 965, Negi alias Debu Vs. State of U.P. and another, 1994 Cri LJ 1783 and Pal Singh Vs. The State : 1955 CriLJ 318.

10. The position of law as laid down in the above cited authorities 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.
- (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.
- (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.
- (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.
- (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 declared a proclaimed person/offender and the proclamation has to be issued and published again.
- (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

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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. 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.

(vii) Statement of the serving officer has to be recorded by the Court as to the date and mode of publication of the proclamation.

(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.

(xi) 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.

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11. In view of the settled proposition of law as discussed above, let us see as to whether the procedure adopted by the trial Court before and at the time of issuance of proclamation was in accordance with law and this proclamation had been duly published. Copies of orders, passed by the trial Court w.e.f. 04.04.2018 till 15.06.2018, have been placed on record as Annexure P-9 (*colly.*). A perusal of order dated 04.04.2018 reveals that on the request made by the Investigating Officer of the case, warrants of arrest were ordered to be issued as against the petitioner for 26.04.2018. Then as per order dated 26.04.2018, non-bailable warrants issued against the petitioner had been received back with the report that he did not meet and then the trial Court, after making an observation that the petitioner was intentionally avoiding the process of law and could not be served through ordinary process and that it was satisfied about this fact, had given direction for issuance of proclamation as against the petitioner. The question that arises at this juncture is as to whether the order qua initiation of proclamation had been rightly passed by the trial Court. In considered opinion of this Court, the answer should be in negative. The petitioner has placed on record a copy of his passport, which shows that he had gone to Spain on 19.02.2016 and at the time of registration of FIR on 22.08.2017, he was not in India. Rather in the FIR itself, it was mentioned by the complainant that the petitioner was in Spain. While issuing warrants of arrest as against the petitioner on 04.04.2018, no observation, however, is shown to have been made by the trial Court to the effect that the petitioner was living in Spain and the warrants were to be executed on that address. Neither any notice or bailable warrants are shown to have been issued against him prior to 04.04.2018. Even on 26.04.2018, when the warrants of arrest against the petitioner had been received back unexecuted with the report that he had not met, no observation had been made that he was in Spain and the

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trial Court straightway recorded its satisfaction that his presence could not be secured through ordinary process and initiated proceedings under Section 82 Cr.P.C. It is not that any member of his family was contacted to obtain his address in Spain. The satisfaction so recorded by the learned Magistrate cannot be stated to be in accordance with law. It is well settled proposition of law that the Court cannot issue proclamation as a matter of course because the police is asking for it. It has to be *prima facie* satisfied that the person has actually absconded and is concealing himself, so that warrants of arrest issued earlier cannot be executed despite reasonable diligence. This *prima facie* satisfaction is not being made out by the order dated 26.04.2018 as passed by the trial Court, which amounts to violation of procedure prescribed under Section 82 Cr.P.C.

12. Another infirmity that can be pointed out is that vide order dated 26.04.2018, the proclamation was ordered to be issued through local police for 11.05.2018, meaning thereby that it was ordered to be issued before the expiry of 30 days. Since the Court concerned was on leave on that date, therefore, the matter was adjourned to 23.05.2018 and fresh proclamation was ordered to be issued for 16.07.2018. The executing police official Daljit Singh had recorded his statement (Annexure P-11) before the Court on 15.06.2018 stating that he had pasted a copy of proclamation on the main gate of the residence of the accused and one copy of the notice on the public place. The date on which such copies were pasted, however, had not been mentioned in the statement but in the order dated 15.06.2018 passed by the trial Court, it was mentioned that the same was effected on 14.06.2018. On the basis of the same, it can be stated that the period of 30 days had elapsed in between the period of publication of proclamation and the date, which was mentioned on proclamation for appearance of the accused before the Court. However, from the statement recorded by the executing police

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official, it is very much clear that the proclamation had not been published in the manner laid down in Section 82(2) Cr.P.C. as there is no mention therein that a copy of the proclamation had been affixed by him on some conspicuous part of the Court house. As discussed above, the sub-clauses i.e. conditions as mentioned in Section 82(1) and (2) of 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 and as one of these modes had not been completed, therefore, there cannot be stated to be a valid publication of proclamation.

13. Accordingly, the present petition is allowed and the impugned order dated 16.07.2018, passed by the learned Judicial Magistrate First Class, Hoshiarpur in case titled as ***State vs. Amarjit Singh Doad***, arising out of FIR No. 88 dated 22.08.2017, registered under Sections 406 and 498-A of the IPC at Police Station Mehtiana, District Hoshiarpur, whereby he had been declared a proclaimed person, is hereby quashed.

14. However, the petitioner is directed to surrender before the Court concerned within a period of four weeks, subject to order for grant of anticipatory bail, if any passed on his petition to be filed under Section 438 of the Cr.P.C. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioner shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court in accordance with law.

15. Needless to observe that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall be bound to dispose of the same expeditiously and that nothing in this order

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shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

16. This order will, however, be subject to payment of costs of Rs. 5,000/-, to be deposited by the petitioner with the District Legal Services Authority, concerned.

22.12.2023
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>