

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

274

CRM M-39585 of 2023

Date of Decision: 06.12.2023

Mahabir Singh

...Petitioner

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Malkiat Singh Hundal, Advocate, for the petitioner.
Mr. Mohit Chaudhary, AAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the instant petition under Section 482 Cr.P.C. with a prayer to quash the impugned order dated 03.01.2022 passed by the Court of Additional Chief Judicial Magistrate, Tarn Taran, whereby, the present petitioner has been declared to be proclaimed offender.

2. A short reply by way of an affidavit of the Deputy Superintendent of Police, Sub-Division Tarn Taran, District Tarn Taran has been filed on behalf of the respondent-State and the same is taken on record.

3. Learned counsel for the petitioner contends that the petitioner was falsely involved in FIR No. 215 dated 15.11.2014 under Sections 304-A, 279, 337, 338 and 427 IPC registered at Police Station Jhabhal, Tarn Taran, on the basis of statement made by Dalbir Singh. In the said case, the petitioner surrendered and was released

on bail on 20.11.2014. Thereafter, the petitioner was regularly appearing before the trial Court. On 02.03.2020, the trial Court closed the prosecution evidence by Court order as no PW was present, even after granting it several opportunities and the case was adjourned to 09.03.2020. The petitioner failed to appear on 09.03.2020 and asked his counsel to move an application for exemption, however, the counsel did not make an application and non-bailable warrants were ordered to be issued against the petitioner. Thereafter, with the spread of Covid 19 pandemic, there was a communication gap between the petitioner and his counsel appearing before the trial Court. The petitioner failed to track the date of hearing and failed to appear before the trial Court. On 25.10.2021, the matter was taken up and it was observed that the warrant issued against the petitioner was received back with the report that the house of the petitioner was locked. Thereafter, the trial Court initiated proclamation proceedings under Section 82(1) of the Cr.P.C. and the copy of the zimini order dated 25.10.2021 was annexed as (Annexure P-5). Thereafter, vide order dated 03.01.2022, the trial Court declared the petitioner as proclaimed offender in terms of Section 82(1) Cr.P.C. and the property of the petitioner was also ordered to be attached illegally vide order dated 03.01.2022 (Annexure P-6). Learned counsel further contends that the petitioner was wrongly declared as proclaimed offender in the present case as the FIR was under Sections 304-A, 279, 337, 338 and 427 IPC. Learned counsel further contends that in

view of the provisions contained under Section 82(4) Cr.P.C., the petitioner could not have been declared as proclaimed offender, but could only be declared as proclaimed person. Still further, the petitioner was willing to appear before the trial Court and to join the proceedings.

4. On the other hand, learned State counsel vehemently opposed the submissions made by the learned counsel for the petitioner on the ground that the petitioner intentionally did not appear before the trial Court and does not deserve any equitable relief from this Court.

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

6. In the present case, the main contention raised on behalf of the petitioner involves interpretation of provisions of Section 82 of the Cr.P.C. and same is reproduced as below:-

“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).]”

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 pronounce him a proclaimed offender and make a declaration to that effect. In the present case, the present petitioner was being prosecuted for the offences punishable under Sections 304-A, 279, 337, 338 and 427 IPC 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. The trial Court has also wrongly ordered to attach the properties of the present petitioner. In violation of Section 83 of the Cr.P.C., the properties of the petitioner were ordered to be attached on 25.10.2021 vide order (Annexure P-5), when the proclamation was ordered to be issued. As per the provisions of Section 83 of the Cr.P.C., it is provided that where at the time of issuance of proclamation, the Court is satisfied, by affidavit or otherwise that the person in relation to whom the proclamation is to be issued, (a) is about to dispose of the whole or part of the property or, (b) is about to remove the whole or any part of his property from the local jurisdiction of the Court, the Court may order attachment simultaneously with the issue of proclamation. In the present case, no such satisfaction was recorded by the trial Court and even the

attachment of the property has been ordered by overlooking the mandatory provisions.

13. In view of the above discussion, the present petition is allowed and the impugned orders dated 25.10.2021 (Annexure P-5) and dated 03.01.2022 (Annexure P-6), passed by the Court of Additional Chief Judicial Magistrate are set aside. However, the petitioner is directed to appear before the trial Court on each and every date of hearing and shall not absent during the pendency of the petitioner without the prior permission of the Court.

06.12.2023	(N.S.SHEKHAWAT)
amit rana	JUDGE
Whether reasoned/speaking	: Yes/No
Whether reportable	: Yes/No