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

**CRM-M No. 52698 of 2022
Date of Decision: 06.10.2023**

JASBIR SINGH WALIA

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Sunil Chadha, Senior Advocate with
Ms. Kashish Aggarwal, Advocate,
for the petitioner.

Mr. Anmol Singh Sandhu, Asstt. A.G. Punjab.

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SANJIV BERRY, J. (ORAL)

The instant petition under Section 482 Cr.P.C. has been preferred by the petitioner for quashing of the order dated 28.09.2022 (Annexure P-3) passed by learned Judicial Magistrate First Class, Ludhiana in FIR No.37 dated 13.04.2011 registered at Police Station P.A.U, Ludhiana under Sections 420, 465, 467, 468 and 471 IPC, whereby the petitioner has been declared as Proclaimed Offender.

2. In *nutshell*, the case of the petitioner is that the petitioner after having been granted concession of anticipatory bail vide order dated 22.03.2014 passed by the Court of Additional Sessions Judge, Ludhiana

appeared in the trial Court and furnished the bail bonds and admitted to bail. The petitioner thereafter regularly appeared in the trial Court on each and every date along with his counsel and on 27.02.2019, he moved an application under Section 205 Cr.P.C seeking exemption from personal appearance on medical grounds (Annexure P-1) and vide order dated 27.02.2019 (Annexure P-2) the request of petitioner was allowed for exemption from his personal appearance, subject to condition that he shall so appear before the Court as and when required and also subject to condition that his counsel will appear on each and every date on his behalf. As per the petitioner his counsel continued to appear in Court on each and every date of hearing till 02.03.2022. Then on 13.06.2022 (Annexure P-9) notice was issued to the petitioner to appear in Court on 01.07.2022, which was not received back served or otherwise and fresh notice was again issued on 01.07.2022 (Annexure P-10) for 14.07.2022, then for 30.07.2022 (Annexure P-12) and on that date also the notice received back unserved but the learned Magistrate proceeded to issue non-bailable warrants qua the petitioner for 17.08.2022. Despite the fact that the presence of the petitioner was exempted by the Court itself, on 17.08.2022 (Annexure P-13) the warrants were received back un-executed but the learned trial Court proceeded to pass directions for issuance of proclamation and affixation qua the petitioner for 31.08.2022. The presence of the petitioner was awaited till 06.09.2022 (Annexure P-14) and after considering that the proclamation has been duly effected on 27.08.2022 for awaiting service of petitioner and on 28.09.2022 vide Annexure P-3 declared the petitioner as proclaimed offender. Prior to

that the petitioner had filed a petition in this Court by way of CRM-M-30772 of 2017 seeking quashing of the FIR.

3. It is, *inter alia*, contended by learned Senior counsel appearing on behalf of the petitioner that the impugned order passed by learned Magistrate is abuse of process of law and has been passed without taking care of provisions contained in Section 82 Cr.P.C. He submits that from the record, it is evident that the petitioner had been regularly appearing in the Court from the day he was granted concession of bail in 2014 till 2019, when due to medical problem he had to seek exemption and vide order Annexure P-2, dated 27.02.2019 he was granted exemption from appearance in the case, subject to condition that his counsel will be appearing in the Court on each and every date and that he will come in person as and when so required by the Court. He submits that the counsel representing the petitioner in the trial Court continue to appear on his behalf till 02.03.2022, when the counsel himself got entangled in some personal difficulty. He submits that thereafter summons issued to the petitioner were not served, but the learned Magistrate abruptly issued warrants of arrest which too received back unserved and later proceeded to issue proclamation for 31.08.2022 considering the statement of executing official to have effected the proclamation on 27.08.2022 adjourned the date to 28.09.2022 for awaiting the presence of the petitioner. He submits that in doing so the learned trial Court has not adhered to the due compliance of the provisions contained in Section 82 Cr.P.C and on this score the impugned order is liable to be set aside. In support of his contentions, he has referred to judgment cited as

Ashok Kumar vs. State of Haryana: 2013(4) R.C.R, (Criminal)550 and judgment rendered by this Court in *CRM-M-25088 of 2021, titled as Anita Sharma vs. State of Punjab* decided on 16.07.2021. He further submits that even after the trial of the case arising out of the FIR in State vs. Harbans Singh and others, CHI-39466 of 2013 has since culminated in the acquittal of the petitioner and vide judgment dated 04.03.2023 passed by learned Judicial Magistrate First Class, Ludhiana and as such he prayed for acceptance of the petition.

4. The learned counsel for the State has assailed these arguments by submitting that since the petitioner had misused the concession of bail and the consequent exemption granted by the trial Court, had not appeared despite issuance of summons and nonailable warrants, the trial Court have rightly issued proclamation.

5. After considering the respective submissions, so far as the factual position is concerned there is no dispute qua grant of bail and subsequent exemption being granted by learned trial Court vide Annexure P-2 dated 27.02.2019. It is also not disputed that thereafter the petitioner had been duly represented by his counsel in the trial Court on each and every date. It is evident that the learned Magistrate issued summons for presence of petitioner on 30.06.2022 but the same were received back unserved till 30.07.2022 when the trial Court proceeded to issue his nonailable warrants, for 17.08.2022 which too were received back unexecuted. On 17.08.2022 (Annexure P13) learned Magistrate holding that petitioner is causing delay in trial, issued proclamation for 31.08.2022 and vide order

dated 06.09.2022 (Annexure P14) further observed that the proclamation was effected on 27.08.2022 and postponed the date to 28.09.2022, awaiting the service of the petitioner, ultimately leading to passing of impugned order dated 28.09.2022 (Annexure P-3).

6. Before proceeding further it would be apt to have a view of Section 82 Cr.P.C. which 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).”

7. In the backdrop of provisions contained in Section 82 Cr.P.C, in the present case a proclamation against the petitioner under Section 82 Cr.P.C. was ordered to be published vide order dated 17.08.2022 (Annexure P-13) for 31.08.2022 and his appearance was ordered to be awaited for 06.09.2022. On 06.09.2022, vide order Annexure (P-14) it was observed by learned Magistrate that the proclamation of petitioner has been effected on 27.08.2022 and as stipulated period of 30 days has not elapsed so the matter adjourned to 28.09.2022 for awaiting his appearance. Vide impugned order dated 28.09.2022 (Annexure P-3) petitioner has been declared as proclaimed offender in this case.

8. A perusal of aforesaid discussion, itself would reveal that the

proclamation dated 17.08.2022 was issued for the appearance of the petitioner on 06.09.2022 and the publication was effected on 27.08.2022 which shows that the statutory period of 30 days as required under Section 82 of the Cr.P.C was not specifically given. The learned Magistrate although vide order dated 06.09.2022 (Annexure P-14) adjourned the case to 28.09.2022 for awaiting the appearance despite the fact that the learned magistrate has no power to extend the time for the presence of the petitioner by simply adjourning the case for awaiting the presence of the petitioner, since, it was mandatorily required to issue fresh proclamation for publication there of, in accordance with provisions contained in Section 82(2) Cr.P.C. There was admittedly no order in publication for the accused giving him specified time and place to appear on 28.09.2022 when the impugned order dated 28.09.2022 (Annexure P-3) was passed by learned Magistrate declaring petitioner as proclaimed offender in the case. The learned Magistrate had fallen in error in extending time from 06.09.2022 as mentioned in the proclamation for the presence of the petitioner to 28.09.2022 without issuance of fresh proclamation for his appearance on that date because the subsequent adjournments so granted by the Court so as to comply the period of 30 days would not in any manner have cured the defect of not having provided a clear cut period of 30 days from the publication of the proclamation till the date for his causing appearance as per the proclamation notice and in the present case, admittedly there is no proclamation notice ever published for the appearance of the petitioner for the stipulated date i.e. 28.09.2022 when he has been declared proclaimed

offender in this case.

9. Therefore, in the light of the above facts and circumstances, it is observed that the impugned order dated 28.09.2022 (Annexure P-3) passed by learned Judicial Magistrate First Class, Ludhiana is not as per the law and as such it cannot be sustained in the eyes of law and hence is set aside, the petition is accordingly allowed.

10. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

(SANJIV BERRY)
JUDGE

06.10.2023
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i)	Whether speaking/reasoned?	Yes
ii)	Whether reportable?	Yes