

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-51972-2023

Date of Decision :- 13.10.2023

Sher Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr.Mansur Ali, Advocate
for the petitioner.

SUVIR SEHGAL, J. (ORAL)

CRM-43574-2023

Exemption, as prayed for, is granted.

Application is allowed.

CRM-M-51972-2023

1. Instant petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 29.08.2023, Annexure P6, passed by learned Sub Divisional Judicial Magistrate, Zira whereby petitioner has been declared as 'Proclaimed Person' in complaint No.COMA-1729 of 2017, Annexure P1, titled as “State through Balwinder Singh, Insecticide Inspector Versus M/s Virk Gill Kheti Store”

under Sections 3(k)(1), 17, 18, 29 and 33 punishable under Section 29 of the Insecticides Act, 1968 with Rules 27(5) of Insecticide Rules, 1971 and consequential summoning order dated 05.10.2019, Annexure P2.

2. At the outset, counsel for the petitioner submits that petitioner has challenged the summoning order, Annexure P2, by way of a separate petition and while issuing notice to the respondents, this Court by order dated 25.01.2020, Annexure P3, has stayed further proceedings before the trial Court. By making reference to the interim order dated 01.07.2023 passed by the trial Court, counsel submits that service of the petitioner has been ordered through proclamation for 26.07.2023. He urges that as the proclamation had been issued for a period of less than 30 days, the same is hit by Section 82, Cr.P.C. He submits that in order to get over this defect, by order dated 26.07.2023, Annexure P5, the trial Court adjourned the proceedings to 29.08.2023 when impugned order, Annexure P6 was passed. Counsel submits that the petitioner is prepared to appear before the trial Court and join the proceedings, subject to any cost as imposed by this Court.

3. Notice of motion.

4. On asking of the Court, Mr. Anup Singh, AAG, Punjab, accepts notice on behalf of respondent-State. He has opposed the prayer made in the petition and submits that the mandatory procedure prescribed under Cr.P.C. has been complied with.

5. I have heard counsel for the parties and considered the submissions made by them.

6. A perusal of the interim order dated 01.07.2023 passed by the

trial Court, which has been reproduced in body of the petition, shows that the proclamation notice has been issued for service of the petitioner for a period of less than 30 days. Thereafter, the trial Court adjourned the matter to await the completion of the requisite period. This course of action has been held to be a breach of the procedure prescribed by Section 82 Cr.P.C. in *Ashok Kumar Versus State of Haryana and another, 2013 (4) RCR (Criminal) 550, Dilbagh Singh @ Sonu Versus State of Punjab, 2015 (8) RCR (Criminal) 166* and *Shokat Ali Versus State of Haryana and another, 2020 (2) RCR (Criminal) 339*.

7. After an exhaustive discussion of the case law, a Co-ordinate Bench of this Court in *Anita Sharma Versus State of Punjab* (CRM-M-25088-2021, decided on 16.07.2021) has held that the date of appearance of the accused before the trial Court must not be less than 30 days from the date of publication of the proclamation. It is evident that the mandatory period has not been adhered to. Therefore, the impugned order whereby the petitioner has been declared as a Proclaimed Person cannot be sustained.

8. As a result, impugned order, Annexure P6 is set aside qua the petitioner. He is directed to surrender before the trial Court and join the proceedings within a period of three weeks from today. In case he does so and moves an appropriate application, he shall be released on bail on furnishing bail/surety bonds to the satisfaction of the Court concerned. This will be subject to deposit of cost of Rs.20,000/- with 'Poor Patient Welfare Fund', PGIMER, Sector 12, Chandigarh, which shall be a condition precedent to the release of the petitioner on bail.

9. Petition is disposed of.

13.10.2023
Brij

(SUVIR SEHGAL)
JUDGE

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