

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

CRM-M-56380-2022

Date of decision : 10.08.2023

Chamkaur Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. Kunal Vinayank, Asstt. Advocate General, Punjab
for respondent No.1-State.

Mr. G.S. Rawat, Advocate
for respondents No.2 and 3.

PANKAJ JAIN, J. (ORAL)

Challenge is to the order dated 18th of November, 2020 passed by the Ld. Judicial Magistrate 1st Class, Jalandhar whereby the petitioner has been declared as Proclaimed Offender in case FIR No.167 dated 14th of December, 2019 registered for the offences punishable under Sections 420, 406, 467, 468, 471, 120-B IPC, 1860 and Sections 4 and 5 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 at Police Station Basti Bawa Khel, District Jalandhar.

2. Counsel for the petitioner submits that the allegations in the FIR are w.r.t. investment made by the complainant claiming that he

was assured of double returns and thus offence of cheating is not made out at the first instance. He submits that dehors the merits the parties arrived at a settlement. The matter was compromised. The affidavits were sworn by the complainant dated 24th of December, 2019 and 26th of December, 2019 which have been placed on record as Annexures P-2 and P-3. The parties approached this Court seeking quashing of FIR vide CRM-M No.4164 of 2020 and taking cognizance of the compromise between the parties, this Court issued notice of motion on 30th of January, 2020 and the matter was adjourned to 14th of February, 2020. After 14th of February, 2020 the matter was adjourned to 30th of April, 2020 and thereafter could not be taken up on account of Covid-19 Pandemic before 19th of July, 2022.

3. When the matter was taken on 19th of July, 2022 State Counsel apprised the Counsel for the petitioner that the petitioner as well as co-accused have been declared as Proclaimed offenders vide order dated 18th of November, 2020.

4. It has been contended that all the proceedings leading to the impugned order dated 18th of November, 2020 were carried out in violation of the general directions issued by this Court to be followed by the Courts below during Covid-19 Pandemic. Counsel for the petitioner submits that the petitioner appeared before the Additional Sessions Judge seeking pre-arrest bail and the same was disposed off

vide order dated 27th of January, 2021. Even at that stage no reference was made by the prosecution to the order dated 18th of November, 2020 and during all this period the petitioner was kept in dark and all the proceedings leading to the proclamation were carried at the back of the present petitioner. He further refers to the statement made by serving constable on 4th of August, 2020 which shows that the proclamation was allegedly served on the address of the petitioner on 2nd of August, 2020 requiring him to appear on 4th of August, 2020 and thus submits that the mandatory period of 30 days has not been complied with.

5. State Counsel is not in position to dispute the aforesaid facts

6. It will be apposite to peruse 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 sub-section (1).]”

7. Section 82 Cr.P.C. is part of Chapter VI of the Criminal Procedure Code that prescribes the Process to Compel Appearance. The proceedings under Part 'C' of the said Chapter are in form of last remedy with the Court for compelling attendance of an accused person

or witness whose presence is required. The same entails grave consequences. Section 174-A of the Penal Code provides punishment of imprisonment which may extend to three years along with fine where a person fails to appear at the specified place and specified time as required by the proclamation published under sub-Section 1 of Section 82 of the Code. Chapter VI of the Criminal Procedure Code calls for attachment and sale of the property of the proclaimed offender. Keeping in view these serious consequences of the pronouncement under Section 82(4) Cr.P.C., the Code mandates procedure prior to such pronouncement. The same is based on fairness. Since the pronouncement is followed by civil as well as penal consequences, the procedure prior to pronouncement needs to be followed strictly.

8. Prior to invoking Section 82 Cr.P.C., the Courts must have reasons to believe that the person against whom warrant has been issued has absconded or is concealing himself with an intent to defeat execution of such warrants. A belief can be said to be founded on 'reasonable grounds' only when there is something cogent to justify the same. The expression 'reasonable grounds' has been dealt by Supreme Court in '**Chenna Boyanna Krishna Yadav Vs. State of Maharashtra**', (2007) 1 SCC 242 to connote as under :

“13. xxxxxxxx The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provisions requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction xxx”

(emphasis supplied)

9. Thus prior to resorting to Section 82(1) the belief of the Court based upon the reasons is *sine qua non* and must be reflected from the records and order. Only on the satisfaction of the said ingredient, the Court should publish a written proclamation requiring the wanted person to appear at a specified place and at a specified time. The provision further mandates that time specified should not be less than 30 days from the date of publication of proclamation. Section 82(2)(i) prescribes following modes of publication :

- (a) It must be publicly read in some conspicuous place of the town or village where such person ordinarily resides;
- (b) The proclamation must be affixed at some conspicuous part of the house or homestead or town or village which is ordinarily place of residence of such person; and
- (c) Copy of proclamation should also be affixed at some conspicuous part of the Court.

10. Section 82(2)(ii) further prescribes that if the Court thinks fit it may also direct copy of the proclamation to be published in a daily newspaper circulating at the place where such person ordinarily resides.

11. While all modes of publication as prescribed under Section 82(2)(i) need to be mandatorily complied with, mode of publication as prescribed under Section 82(2)(ii) i.e. publication in newspaper is subject to the opinion of the Court deeming it fit.

12. Section 82(3) further prescribes that publication of proclamation as prescribed under Section 82(2)(i) is the conclusive evidence that the requirements of the section have been complied with. It is thereafter, the Court may, after making inquiry w.r.t. compliance of the procedure as contemplated under Section 82(2) pronounce a person to be a Proclaimed Offender/Person and make a pronouncement to that effect under Section 82(4).

13. Facts are not much in dispute in the present case.

14. It is not denied that the proclamation requiring the petitioner to appear before the concerned Court on 4th of August, 2020 was issued on 2nd of August, 2020. Though the petitioner was declared a Proclaimed Offender on 18th of November, 2020 but this period cannot be a substitute to the 30 days provided by law for the person to

appear before the Court. Since the proclamation has been made in violation of the mandatory provision the same cannot survive and is hereby set aside.

15. In view of above, the present petition is allowed. Impugned order dated 18th of November, 2020 is quashed.

16. The petitioner shall continue to appear before the Trial Court.

August 10, 2023	(Pankaj Jain)
Dpr	Judge

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