

CRM-M-56485-2022

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

115+277

CRM-M-56485-2022 (O&M)

Date of decision: 21.02.2023

GURMEET SINGH ALIAS MEET

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Jasdeep Singh Gill, Advocate for the petitioner.

Mr. Manipal Singh Atwal, DAG Punjab.

Mr. PBS Goraya, Advocate for the complainant.

AMAN CHAUDHARY. J.

CRM-8198-2023

For the reasons stated in the application, the same is allowed.

Annexures P-4 and P-5 are taken on record subject to all just exceptions.

CRM-M-56485-2022

Present petition has been filed under Section 482 CrPC for quashing of the order dated 27.10.2022 (Annexure P-3) passed by learned Chief Judicial Magistrate, Amritsar, whereby petitioner has been declared as proclaimed offender in FIR No.90 dated 06.07.2020 under Sections 302,

120-B, 148, 149 of the IPC and Sections 25, 27, 54 of the Arms Act, 1959 registered at Police Station Gharinda, District Amritsar Rural.

Learned counsel for the petitioner contends that as is apparent from the statement made by the police official dated 27.10.2022, Annexure P-5, the mandatory provision of Section 82(2)(i)(a) of CrPC has not been complied with inasmuch as it is not mentioned therein that the proclamation was read publicly in some conspicuous place of the town or village in which the petitioner resides. Still further, there was a mis-statement made by the said police official before the learned Chief Judicial Magistrate, on 10.06.2022, Annexure P-4, in which he had stated that there is no bail/anticipatory bail application before any Court of law despite being aware of the fact that the present petition filed by the petitioner was pending, wherein notice of motion having been issued, the State had sought time to file reply thereto. He relies on the judgments passed in the cases of **Harvinder Singh Vs. State of Haryana and another**, CRM-M-25921-2020 decided on 22.09.2020; **Manpreet Singh Vs. State of Punjab**, CRM-M-15619-2021 decided on 08.04.2021 and **Rohit Kumar alias Raju Vs State of NCT Delhi and another**, 2008 Cri.L.J. 3561 (DH).

Learned State counsel as also the learned counsel for the complainant submit that the order was rightly passed by the trial Court and that the petitioner was in the knowledge of the proceedings pending, yet he absconded and there was no interim order in his favour. Learned State counsel, however, has not been able to refute the statements of the police

official, Annexures P-4 and P-5, as referred to by the learned counsel for the petitioner.

Heard.

Before proceeding further, it is apposite to make a reference to the Section 82 Cr.PC., which reads thus:

“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)."

A reference to the statements made by the concerned ASI Mann Singh before the learned CJM, Amritsar on 10.06.2022 and 27.10.2022, is pertinent. The same read thus:-

Dated 10.06.2022:-

"Stated that accused Gurpreet Singh and Gurmit Singh have been nominated in case FIR No. 90/2020 under sections 302, 120B, 148, 149 IPC and 25-27-54 of Arms Act. Many times raid was conducted but the accused could not be arrested. Arrest of the accused has not been stayed by any Court of competent jurisdiction. There is no bail/anticipatory bail application is pending before any court of competent jurisdiction."

Dated 27.10.2022:-

"Stated that the proclamation against the accused Gurpreet Singh and accused Gurmit Singh in the above noted case were entrusted to me and in compliance thereof, I pasted one copy of proclamation at the outer door of the accused on 25.9.2022 whereas another copy pasted on the public place on 25.9.2022 and third copy pasted at the notice board of the court complex on 25.9.2022, proclamation which are Ex. PA and Ex. PB and report overleaf on the proclamation which are Ex. PC and Ex. PD which bears my signatures."

The aforesaid statements clearly depict that the proclamation was not read out publicly in some conspicuous place of the town or village where the petitioner ordinarily resided, though it is mentioned therein that it was pasted at the outer door of the house of the accused, on the public place and

the third copy at the notice board of the court complex, even when the three clauses (a),(b) and (c) of Sub Section 2(i) of Section 82 Cr.PC. are conjunctive and to be mandatorily complied with cumulatively and not alternatively, as observed in the cases of **Rohit Kumar @ Raju** (supra) and **Gurbir Singh Mundi vs. State of Punjab and another**, CRM-M-2983-2021, decided on 16.12.2021. The factum of valid publication depends on the satisfaction of each of these clauses.

Furthermore, the judgment of **Balwant Singh vs. The State**, 1960 PLR 189, was reiterated by this Court in the case of **Harvinder Singh** (supra), noticing that the executing constable in his statement had stated that he affixed one copy of the proclamation on house of the accused and one copy in front of the court, and finding that he did not publicly read out the proclamation in some conspicuous place in the village where the petitioner ordinarily resided, quashed the proceedings as the essential condition laid down in Section 82(2)(i)(a) of the Cr.P.C. as to the mode of publication of the proclamation was not complied with.

A mandatory provision of law has to be construed strictly and the non-compliance thereof cannot be regarded as a curable irregularity. As such, in the present case, the non reading of the proclamation publically as envisaged in Section 82(2)(i)(a) Cr.PC is found to be in departure of the statutory requirement and thus, the same renders the proclamation and proceedings a nullity.

In view of the above discussion and to secure the ends of justice, the present petition is allowed. The impugned order dated 27.10.2022, Annexure P-3, is hereby set aside.

(AMAN CHAUDHARY)
JUDGE

February 21, 2023

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>