

Neutral Citation No. 2023:PHHC 164388

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

126-2

CRM-M-58013-2023 (O&M)

Date of decision: 20.12.2023

Inderpal Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Gagandeep Singh Bajwa, Advocate
for the applicant-petitioner.

Ms. Himani Arora, AAG, Punjab.

Mr. Paras Kumar Khindri, Advocate
for respondent No. 2/complainant.

MANISHA BATRA, J. (Oral)

1. CRM-50265-2023

Allowed as prayed for.

Annexure P-4 is taken on record.

2. CRM-M-58013-2023 (O&M)

The instant petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of order dated 13.09.2017, passed by the Court of learned Judicial Magistrate First Class, Amritsar in case arising out of FIR No. 192 dated 06.08.2014, registered under Sections 406 and 498-A of the

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IPC at Police Station Sultanwind, Amritsar, whereby he had been declared a proclaimed offender.

3. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the basis of a complaint submitted by respondent No. 2/complainant Simranjeet Kaur making allegations that she was married with the present petitioner on 22.02.2009. She alleged that she was being harassed, tortured and subjected to cruelty by the petitioner and his family members on account of demand of dowry and her *Istridhan* was misappropriated and converted to their own use by them. After registration of the FIR on 06.08.2014, the investigation proceedings were initiated. After completion of necessary investigation and usual formalities, challan was presented in Court. However, the petitioner could not appear before the trial Court as he has fallen under the trap of taking drugs and was dealing with several health issues. He had been on medication and that is why, he could not appear before the Court.

4. Learned counsel for the petitioner has argued that the impugned order is not sustainable in the eyes of law as there is no procedure for declaring a person, facing trial for commission of offences under Sections 406 and 498-A of the IPC, as a proclaimed offender and at the most, such person can be declared a proclaimed person. It is further submitted that proclamation proceedings had not been conducted in accordance with the procedure laid down under Section 82(1) Cr.P.C. and there was violation of mandatory requirements. It is further submitted that now a compromise has been arrived at between the petitioner and respondent No. 2 and he has filed a separate petition, bearing CRM-M-57890-2023, for quashing of the FIR, in which, after

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issuance of notice of motion, the parties have been directed to appear before the trial Court for recording of their statements in support of the compromise, vide order of the even date. Hence, he has argued that the petition deserves to be allowed and the impugned order is liable to be set aside.

5. Learned counsel for respondent No. 2/complainant has submitted that a compromise has actually been arrived at between the parties and respondent No. 2 has no objection if the impugned order, declaring the petitioner a proclaimed offender, is set aside.

6. Learned State counsel has submitted that the petitioner remained absent for a substantial period. He was very well aware about the trial and was a bail jumper. Therefore, she has argued that the impugned order has rightly been passed by the trial Court and the present petition is liable to be dismissed.

7. I have heard learned counsel for the parties at length and have minutely scrutinized the record.

8. On giving due deliberation to the contentions as raised by learned counsel for the parties and on overall perusal of the orders passed by the trial Court from the date of initiating proceedings under Section 82 Cr.P.C. as against the petitioner till the date of declaring him a proclaimed offender, I am of the considered opinion that the impugned order dated 17.07.2018 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

9. At the outset, it would be relevant to refer to the provision of Section 82 Cr.P.C., which provides for publication of proclamation against the person absconding. It 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

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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).”

10. There are catena of judgments of different High Courts discussing the requirements necessary for issuance and publication of proclamation against an absconder under Section 82 Cr.P.C. and for declaring him as a proclaimed person/offender. These requirements have been discussed from time to time in ***Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561, Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561, Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366, Devender Singh Negi Vs. State of U.P. : 1994 CrL LJ (Allahabad HC) 1783, Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826, Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339, Dilbagh Singh Vs. State of Punjab : (P&H) 2015 (8) R.C.R. (criminal) 166, Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550, Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368, Birad Dan Vs. State : 1958 CriLJ 965, Birad Dan Vs. State : 1958 CriLJ 965, Negi alias Debu Vs. State of U.P. and another, 1994 Cri LJ 1783 and Pal Singh Vs. The State : 1955 CriLJ 318.***

11. The position of law as laid down in the above cited authorities and which is relevant for the purpose of disposal of this case is that while issuing a proclamation under Section 82(1) Cr.P.C., the requisite date and

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place for appearance must be specified in the proclamation requiring the accused to appear on such date at the specified place. Such date must not be less than 30 days from the date of issuance and publication of the proclamation. Where the period between issuance and publication of the proclamation and the specified date of hearing is less than thirty days, the accused cannot be declared a proclaimed person/offender and the proclamation has to be issued and published again. A proclamation has to be published in the manner laid down in Section 82(2) Cr.P.C. The conditions which are specified in Section 82(2) Cr.P.C. for publication of a proclamation against an absconder are mandatory. Any non-compliance thereof cannot be cured as an irregularity and renders the proclamation and proceedings subsequent thereto a nullity.

12. On applying the above discussed position of law to the peculiar facts and circumstances of the present case, and on a perusal of the orders passed by the trial Court (copies of which have been placed on record), it is revealed that the bail of the petitioner had been cancelled on 21.04.2017. Non-bailable warrants were issued against him for 16.05.2017 and then for 27.07.2017, which had not been received back in any manner. As on 27.07.2017, learned Magistrate, by observing that the petitioner was intentionally avoiding his service and could not be summoned through ordinary way, had issued proclamation against him for 20.08.2017. It is further revealed that since 20.08.2017 was a holiday being Sunday, therefore, the file was taken up by the Magistrate on 21.08.2017. On that date, the statement of serving police official had been recorded and by observing that statutory period for awaiting the appearance of the petitioner had not been

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elapsed, the matter was adjourned to 13.09.2017 for his appearance. On 13.09.2017, he was declared a proclaimed offender.

13. Now the question that arises for consideration is as to whether the procedure so adopted by the learned Magistrate can be stated to be a proper procedure or not? In my considered opinion, the answer to this question should be in the negative. A copy of report made by the executing police official HC Narender Pal qua the affixation/pasting of the proclamation has been placed on record as Annexure P-4 and a perusal of the same reveals that the proclamation was received back on 01.08.2017. He had affixed/pasted the same at the house of the petitioner; at a public place and then in the Court premises from 01.08.2017 to 04.08.2017. It is because of this fact that when the matter had been taken up by the Magistrate on 21.08.2017, it was observed that statutory period of 30 days had been elapsed. On adjourning the case from 20/21.08.2017 to 13.09.2017, the defect in due publication of proclamation would not be deemed to be cured as while interpreting the provisions of Section 82(1) Cr.P.C., it is clear that a specific period of 30 days is required to be furnished to the accused and that even in case the Court subsequently adjourns the matter, the said adjournment beyond nominated date cannot be treated as compliance of provisions of Section 82(1) Cr.P.C. of providing 30 days. Reliance in this context can be placed upon ***Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550***, wherein a co-ordinate Bench of this Court was dealing with the same situation as the publication in that case was effected on 09.02.2013 and the accused was directed to appear in Court on 03.03.2013 as per that publication, which period was less than 30 days. It was held that the order declaring the accused as a proclaimed person

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was not as per law and was liable to be set aside. Similar position has been reiterated by the judgment dated 16.07.2021, passed by a co-ordinate Bench of this Court in CRM-M-25088-2021, titled as **Anita Sharma vs. State of Punjab**, wherein it was held that where the period between the issuance of publication of proclamation and specified date of hearing is less than 30 days, the accused cannot be declared a proclaimed persons/offender and the proclamation has to be issued and published again; and in **Pritpal Singh vs. State of Punjab, 2020 (1) Law Herald 837**, wherein the proclamation was effected on 06.08.2009; the petitioner was not afforded clear period of 30 days to cause his appearance as he was required to cause his appearance on 28.08.2009 and he was declared a proclaimed offender on 08.09.2009. It was held that by adjourning the matter thereafter the defect would not be cured.

14. Since in the present case also, the proclamation was issued on 27.07.2017 for 20.08.2017 i.e. for a period of less than 30 days and it was published/effected during the period from 01.08.2017 till 04.08.2017 and the concerned Magistrate had adjourned the matter for 13.09.2017; apparently with intention to treat the above said period as compliance of Section 82(1) Cr.P.C., therefore, it cannot be stated that there was mandatory compliance of the provisions enshrined under Section 82 Cr.P.C.

15. In view of the discussion made above and finding merit in the present petition, the same is allowed and the impugned order dated 13.09.2017, passed by the Court of learned Judicial Magistrate First Class, Amritsar in case arising out of FIR No. 192 dated 06.08.2014, registered under Sections 406 and 498-A of the IPC at Police Station Sultanwind,

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Amritsar, whereby the petitioner had been declared a proclaimed offender, is quashed with all consequential proceedings arising therefrom.

16. However, the petitioner is directed to surrender before the Court concerned within a period of four weeks, subject to order for grant of anticipatory bail, if any passed on his petition to be filed under Section 438 of the Cr.P.C. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioner shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court in accordance with law.

17. Needless to observe that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall be bound to dispose of the same expeditiously and that nothing in this order shall be treated as express of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

18. However, this order will be subject to payment of costs of Rs. 5,000/-, to be deposited by the petitioner with the District Legal Services Authority, concerned.

20.12.2023

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes