

Sr.No.129

2023:PHHC:151237

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

CRM-M-58406-2023

Date of decision:28.11.2023

Jaspal Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: Hon'ble Ms. Justice Harpreet Kaur Jeewan

Present: Mr. Preetinder Singh Ahluwalia, Advocate and
Mr. Deepender Singh, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

Harpreet Kaur Jeewan, J.(Oral)

1. Prayer in the present petition filed under Section 482 Code of Criminal Procedure, 1973 for setting aside the order dated 17.12.2022 (Annexure P-3) whereby the petitioner has been declared as 'proclaimed person'.
2. Learned counsel for the petitioner contends that FIR No.81 dated 29.04.2020 registered at Police Station Sadar, District Jalandhar under Sections 304-B and 34 of the Indian Penal Code, 1860 at the instance of Shri Takdeer Singh regarding the death of his daughter. It is alleged in the FIR that after the marriage the daughter of the complainant was harassed by the petitioner and his family members and she committed suicide on 25.04.2020, on being upset from the dowry demand made by the petitioner and his relatives. It is further contended in the FIR that initially the complainant was nervous and in shock, due to the death of his daughter, so he could not make a statement and proceedings under Section 174

Cr.P.C were initiated at the instance of Ranjit Singh, who is cousin of the complainant. It is further alleged in the FIR that after two months of the marriage the petitioner gave beating and demanded Fortuner vehicle before leaving for abroad.

3. It was vehemently contended that neither at the time of commission of the alleged offence nor after the registration of the FIR, the petitioner was in India. The service of notice was not effected upon the petitioner and merely after pasting a copy of the proclamation outside the house of the petitioner in India, the petitioner was declared proclaimed offender. The petitioner has now come back to India on 05.11.2023, as evident from an entry stamp of his passport. Copy of the relevant page of the passport of the petitioner is submitted by the learned counsel for the petitioner today in Court and the same is taken on record. It is further contended that after two months from the marriage, the petitioner went to England and his wife (since deceased) could not join his company due to Covid.

4. It was further submitted that the trial against co-accused Surjeet Kaur (mother-in-law) resulted acquittal as per order dated 12.09.2023 passed by learned Additional Sessions Judge, Jalandhar whereas the complainant Takdeer Singh-PW-5 categorically stated that his son-in-law Jaspal Singh (petitioner) or has never harassed and tortured the victim for demand of dowry. The victim used to remain upset and went in depression as her husband could not return from abroad nor the victim was able to go abroad due to lock-down. It is further contended that the petitioner is ready to appear before the trial court.

5. The paper book reveals that the petitioner has been declared proclaimed person without following the due process. Hisailable warrants were

received back unexecuted as per the order dated 19.09.2022 passed by the

Additional Chief Judicial Magistrate (Annexure P-9) and as per the statement of Balvir Nambardar (Annexure P-10), recorded by the serving Constable, the petitioner had gone to England for the last about 2-1/2 years and he never came back to the village. Even as per the statement of Neela Ram, ASI (Annexure P-11) when he has conducted raid, the house of the petitioner was found locked and as per verification by the Nambardar, the petitioner was not in India for the last 2-1/2 years. As per the order passed by the Chief Judicial Magistrate, Jalandhar on 3.12.2022 (Annexure P-15), a copy of proclamation was pasted only outside the door of the house of the petitioner in India before he was declared as Proclaimed offender by passing the impugned order dated 07.12.2022.

6. In ***Sonu vs. State of Haryana 2021(1) R.C.R.(Criminal) 319*** the co-ordinate Bench of this Court noticed the essential ingredients of Section 82 of the Cr.P.C of issuance and publication of proclamation against absconder and declaring him as proclaimed person which are summarized in para No.7 which reads as under:-

“The essential requirements of Section 82 of the Cr.P.C. for issuance and publication of proclamation against an absconder and declaring him as proclaimed person/offender may be summarized as under:-

(i) Prior issuance of warrant of arrest by the Court is *sine qua non* for issuance and publication of the proclamation and the Court has to first issue warrant of arrest against the person concerned. (See ***Rohit Kumar Vs. State of Delhi : 2008 CrI. J. 2561***).

(ii) There must be a report before the Court that the person against whom warrant was issued had absconded or had been

concealing himself so that the warrant of arrest could not be executed against him. However, the Court is not bound to take evidence in this regard before issuing a Proclamation under Section 82 (1) of the Cr.P.C.. (See ***Rohit Kumar Vs. State of Delhi : 2008 Crl. J. 2561***).

(iii) The Court cannot issue the Proclamation as a matter of course because the Police is asking for it. The Court must be *prima facie* satisfied that the person

has absconded or is concealing himself so that the warrant of arrest, previously issued, *cannot* be executed, despite reasonable diligence. (See ***Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366 and Devender Singh Negi Vs. State of U.P. : 1994 Crl LJ (Allahabad HC) 1783***).

(iv) The requisite date and place for appearance must be specified in the proclamation requiring such person to appear on such date at the specified place. Such date must not be less than 30 clear days from the date of issuance and *publication of the proclamation*. (See ***Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826 and Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339***).

(V) 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. (See ***Dilbagh Singh Vs. State of Punjab***

(P&H) : 2015 (8) R.C.R. (criminal) 166 and Ashok Kumar Vs.

Sate of Haryana and another : 2013 (4) RCR (Criminal) 550)

(vi) The Proclamation has to be published in the manner laid down in Section 82 (2) of the Cr.P.C.. For publication the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of

such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house.

The three sub-clauses (a)- (c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. ***(See Pawan Kumar***

Gupta Vs. The State of W.B. : 1973 CriLJ 1368). Where the Court so orders a copy of the proclamation has to be additionally published in a daily newspaper circulating in the place in which

the accused ordinarily resides. Advisably, proclamation has to be issued with four copies so that one each of the three copies of the proclamation may be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides, to some conspicuous place of such town or village and to some conspicuous part of the Courthouse and report regarding

publication may be made on the fourth copy of the proclamation. Additional copy will be required where the proclamation is also required to be published in the newspaper.

(vii) Statement of the serving officer has to be recorded by the Court as to the date and mode of publication of the proclamation. (See ***Birad Dan Vs. State : 1958 CriLJ 965***).

(viii) The Court issuing the proclamation has to make a statement in writing in its order that the proclamation was duly published on a specified day in a manner specified in Section 82(2)(i) of the Cr.P.C.. Such statement in writing by the Court is declared to be conclusive evidence that the requirements of Section 82 have been complied with and that the proclamation was published on such day. (See ***Birad Dan Vs. State : 1958 CriLJ 965***).

(xi) The conditions specified in Section 82(2) of the Cr.P.C. for the publication of a Proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the Proclamation and proceedings subsequent thereto a nullity. (See ***Devendra Singh Negi alias Debu Vs. State of U.P. and another : 1994 CriLJ 1783*** and ***Pal Singh Vs. The State : 1955 CriLJ 318***).

7. In the present case, the learned Magistrate was brought into the notice that the petitioner was living abroad for a long time and his house is locked as per the statement of ASI Raunki Mal recorded on 21.03.2022 (Annexure P-5) and by the report of ASI Neela Ram recorded on 19.09.2022 (Annexure P-8). Despite

that the proclamation was issued and the petitioner was declared proclaimed offender without calling for correct address of the petitioner and without making any effort to serve a notice at the correct address.

8. Keeping in view the fact that the petitioner was never served and he was not in India at the time of commission of the offence, even, thereafter, at any point of time, despite that, he has been declared as proclaimed offender the same is contrary to the provisions of Section 82 Cr.P.C. The petitioner is ready to join the investigation. In such circumstances the impugned order 17.12.2022 (Annexure P-3) is set aside subject to the following conditions:-

1) that the petitioner shall appear before the trial court within a period of 10 days from today and in that event, he shall be admitted to bail to the satisfaction of the trial court.

2) the petitioner shall continue to appear before the trial court on each and every date of hearing.

3) the petitioner shall not leave India without prior permission of Trial Court.

However, in case the petitioner violates any of the condition, the State and the complainant shall be at liberty to seek cancellation of this order. Present petition is accordingly allowed.

28th November, 2023

Shivani Kaushik

**[HARPREET KAUR JEEWAN]
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No