

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

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CRM-M-527-2023 (O&M)
Date of decision: 10.04.2024

Gobinderpreet Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. A. S. Samra, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of FIR No. 184 dated 19.08.2008, registered under Sections 363, 376, 34 of the IPC and Section 67 of Information Technology Act, 2000 at Police Station Bholath, District Kapurthala along with all the subsequent proceedings arising therefrom including order dated 06.02.2010, passed by the Chief Judicial Magistrate, Kapurthala, whereby the petitioner had been declared a proclaimed offender.
2. Learned counsel for the petitioner, at the very outset, has restricted his argument to the extent of quashing of impugned order dated 06.02.2010 only, whereby the petitioner had been declared a proclaimed offender and he has submitted that he does not wish to press this petition with

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regard to quashing of FIR in question. However, the petitioner is granted liberty to file a fresh petition seeking quashing of FIR in question, if so advised.

3. Brief facts of the case are that the petitioner has been arrayed as an accused in the aforesaid FIR, which was registered on the statement of complainant/victim 'M' (*name withheld*), who was aged about 16 years, alleging therein that on 19.08.2008, the petitioner along with co-accused had taken her away in a car and the petitioner as well as co-accused Ravi @ Gujjar had committed rape upon her turn by turn. The petitioner had recorded a video of the said act and had threatened the victim that if she disclosed the incident to anyone, he would make her obscene video viral. She prayed for taking action against the culprits. After registration of the FIR, investigation proceedings were initiated and after completion of the same, the challan was presented in Court. However, since the presence of the petitioner could not be secured, proceedings under Section 82 Cr.P.C. were initiated against him and he was declared a proclaimed person, vide impugned order dated 06.02.2010.

4. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the petitioner was not in India at the time of registration of the aforesaid FIR. He came to know about his having been declared a proclaimed offender only when he applied for renewal for his passport. He was not aware of the registration of the FIR. The petitioner was never served at his ordinary place of residence in France and he had been declared a proclaimed offender without following the proper procedure prescribed under Section 82 Cr.P.C. With these broad submissions,

learned counsel for the petitioner has argued that the impugned order is liable to be set aside.

5. Learned State counsel has argued that the petitioner was having knowledge about the pendency of the trial and had intentionally avoided his appearance before the trial Court. Therefore, he was rightly declared a proclaimed offender. Hence, it is urged that the petition is liable to be dismissed.

6. I have heard learned counsel for the parties and have also gone through the material placed on record.

7. On giving due deliberations to the contentions as raised by learned counsel for the parties and on an 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 06.02.2010 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

8. 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:-

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- (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).”*

9. 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 CrI. 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.

10. The position of law as laid down in the above cited authorities 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.
- (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.
- (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.
- (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

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than 30 clear days from the date of issuance and publication of the proclamation.

(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.

(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. 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.

(viii) The Court issuing the proclamation has to make a statement in writing in its order that the proclamation was duly

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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.

(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.

11. On applying the above discussed position of law to the peculiar facts and circumstances of the present case and on a perusal of the proclamation dated 28.11.2008, which is annexed as Annexure P-3, it is revealed that since the presence of the petitioner could not be secured through ordinary process, the Court concerned had ordered for publication of proclamation against the petitioner for 23.12.2009. On 23.12.2009, the proclamation issued against petitioner was received back executed and the statement of the executing police official ASI Jaswant Singh was recorded. However, since the proclamation was executed only on 05.12.2009 and the mandatory period of 30 days had not elapsed, the case was adjourned to 06.02.2010 for awaiting the appearance of the petitioner. However, the Magistrate had ignored the fact that a fresh publication was required to be issued, once the period between issuance of publication of proclamation and the specified period of hearing was less than 30 days but while passing the impugned order, the Court concerned had failed to consider the fact that it could not extend the time by simply adjourning the case. Reference in this context can be made to ***Dilbagh Singh Vs. State of Punjab (P&H) : 2015 (8) R.C.R. (criminal) 166.***

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12. Further, a perusal of the statement of the executing police official would reveal that the proclamation was executed by him on 05.12.2009 requiring the petitioner to cause appearance before the Court concerned on 23.12.2009, which means that the petitioner was granted only 18 days' time to cause his appearance before the Court. Hence, the same was in clear violation of the provisions of Section 82(1) Cr.P.C., as per which, a specified time of not less than 30 days is required to be given to the accused from the date of publishing such proclamation which is mandatory in nature. Reliance in this regard can be placed upon ***Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826 and Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339.***

13. More so, the petitioner has taken a plea that he had left India even before registration of the FIR and was not aware of the proceedings pending against him. However, there is nothing on record to suggest that whether any efforts were made by the Court to obtain the address of the petitioner in abroad so that he could have been served with the warrants. Even no efforts whatsoever were made by the Court to ask the complainant or any of his family members about the address of the petitioner of the country, where process could be sent to him. No letter to Ministry of External Affairs qua service of notice/warrants/proclamation against the petitioner is shown to have been written by the trial Court. As such, it can reasonably be presumed that the process never reached the petitioner and hence, he had no occasion to conceal himself. As such, the action of the trial Court by switching to the proclamation proceedings under Section 82 Cr.P.C. can itself

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be stated to be bad in the eyes of law. Reliance in this context can be placed upon *Manjit Kaur vs. State of Punjab : 2013 SCC Online (P&H) 8663*.

14. Accordingly, the present petition is partly allowed and the impugned order dated 06.02.2010 (Annexure P-2), whereby the petitioner had been declared a proclaimed offender is quashed along with all consequential proceedings arising therefrom.

15. However, the petitioner is directed to surrender before the Court concerned within a period of six 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.

16. 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 expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

17. Till the appearance of the petitioner before the trial Court, his arrest remain shall remained.

10.04.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No