

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

CRM-M-1094-2023 (O&M)
Date of decision: 05.01.2024

Lokesh Seth alias Lokesh Kumar ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Satish Sabharwal, Advocate
for the petitioner.

Mr. M. S. Nagra, DAG, Punjab.

Mr. Nitin Sharma, Advocate
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of order dated 24.10.2017 (Annexure P-2), passed by the Judicial Magistrate First Class, Jalandhar in case titled as *State vs. Lokesh Kumar*, arising out of FIR No. 20 dated 17.04.2017, registered under Sections 406 and 498-A of IPC at Police Station Women, District Police Commissionerate Jalandhar, whereby he had been declared as a proclaimed person.
2. 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 written complaint submitted by complainant/respondent No. 2 Usha Rani, who is mother-in-law of the petitioner, alleging therein that on account of a

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matrimonial discord between her daughter and the petitioner, she had filed a complaint against the accused but the same was closed as he had gone abroad and an assurance was given by his family that as and when he would come back, they would have a dialogue with him. Accused Lokesh Seth had come on 28.02.2017, however, the matter could not be resolved. The complainant prayed for opening the previous complaint and confiscating the passport of the petitioner. The marriage between the daughter of the complainant and the present petitioner was solemnized on 27.11.2015 and a complaint was filed by the complainant leveling allegations of harassment on account of demand of dowry. On filing of the second complaint, the present FIR was registered and the investigation proceedings were initiated. However, the presence of the petitioner could not be secured. Ultimately, proceedings under Section 82 Cr.P.C. were initiated against him. Proclamation was published and he was declared a proclaimed person, vide impugned order dated 24.10.2017.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he had been falsely implicated in this case. The present FIR was registered on 17.04.2017, however, the petitioner had already left for abroad on 16.04.2017 and never came back prior to passing of the impugned order. The petitioner had never been served with the summons at his place of residence in Dubai and he was not aware of the pendency of the proceedings in the present FIR. It is also submitted that now a compromise has been arrived at between the parties and the petitioner has filed a separate petition, bearing CRM-M-1006-2023, seeking quashing of FIR on the basis of the compromise. The said petition is also listed today, in which, a report of the JMIC, Jalandhar had already been

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received regarding genuineness of the compromise. With these broad submissions, learned counsel for the petitioner has argued that the impugned order is liable to be set aside.

4. Learned counsel for respondent No. 2/complainant has submitted that he has instructions to say that a compromise has been arrived at between the parties and respondent No. 2 has no objection if the order, declaring the petitioner as a proclaimed person, is set aside.

5. Status report has been filed by learned State counsel. He has argued that the petitioner was having knowledge about the pendency of the trial and had intentionally avoided his appearance. Therefore, he was rightly declared a proclaimed person. Hence, it is urged that the petition is liable to be dismissed.

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

7. 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 person, I am of the considered opinion that the impugned order dated 24.10.2017 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. –

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(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.

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(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 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.***

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

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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 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

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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 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, it is noticed that the present FIR was registered on 17.04.2017 but a perusal of Annexure P-3, which is copy of the passport of the petitioner, shows that he had left India for Dubai on 16.04.2017 itself. There is nothing on record to show that the trial Court has ever attempted to serve the petitioner at his place of residence in Dubai through the Ministry of External Affairs before passing the impugned order. It is clear from the above that the warrants of arrest were issued and proceedings under Section 82 Cr.P.C. were initiated as against the petitioner when he was in Dubai. Hence, the petitioner was wrongly declared a proclaimed person in breach of the prescribed procedure. This Court can also not lose sight of the

fact that the matter already stands compromised between the parties and the petitioner has filed a separate petition before this Court seeking quashing of FIR in question on the basis of the compromise, vide which, the parties were directed to appear before the trial Court for recording of their statements with regard to genuineness of the compromise, which had been done and the trial Court had sent a report that the compromise entered into between the parties was a genuine one. Therefore, I am of the considered opinion that the present petition deserves to be allowed.

14. Accordingly, the present petition is allowed and the impugned order dated 24.10.2017, passed by the Judicial Magistrate First Class, Jalandhar in case titled as *State vs. Lokesh Kumar*, arising out of FIR No. 20 dated 17.04.2017, registered under Sections 406 and 498-A of IPC at Police Station Women, District Police Commissionerate Jalandhar, is quashed with all consequential proceedings arising therefrom.

05.01.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

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