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

CRM-M-1670-2024 (O&M)

Date of decision: 16.09.2024

VINOD KUMAR

... PETITIONER

V/s

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Kulwant Singh, Advocate for the petitioner.

Mr. Adhiraj Singh, AAG, Punjab.

Mr. Harkirat Singh Ghuman, Advocate
for the complainant.

SUMEET GOEL, J.

1. Present petition under Section 482 of the Code of Criminal Procedure, is filed, seeking quashing of order dated 17.08.2023 (Annexure P-5), passed by the Learned Judicial Magistrate, 1st Class, Ludhiana in case FIR No.03 dated 05.01.2023, under Sections 294, 427, 323, 506, 148, 149 IPC, 1860 (Sections 307 and 354 IPC, 1860 added later on) registered at Police Station Dugri, District Ludhiana. Vide the impugned order dated 17.08.2023 the petitioner has been declared proclaimed offender in the case.

2. While assailing the impugned order dated 17.08.2023 (Annexure P-5), the learned counsel for the petitioner has argued, that the order vide which the petitioner has been declared as proclaimed offender, is not sustainable and is liable to be set-aside. It is argued that no effective steps were taken, in the case to serve the petitioner with warrants before issuance of proclamation against him. It is further submitted that the petitioner had no intimation about the pendency of the present proceedings,

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and the petitioner got to know about the factum of his being declared as a proclaimed offender during the hearing of criminal writ bearing No. CRWP-1031 of 2023 (filed by the complainant side) before this Court. It is further submitted, that earlier the petitioner was residing with his brother in House No.1035, Gali No.4, Bhai Himmat Singh Nagar, Dugri, Ludhiana, but due to some family disputes having cropped up between the brothers, the petitioner on 30.06.2023 along with his family members shifted to House No.1733, Phase 3, Karnail Singh Nagar, Pakhowal Road, Ludhiana, and hence the petitioner lived at the said address from 01.07.2023 to 20.08.2023 and thereafter, shifted to House No.37, Block 37, Gali No.2, Jagdish Nagar, Dugri, Tehsil and District Ludhiana. The petitioner has appended an affidavit of his previous landlord and a rent agreement of his subsequent place of residence with this petition.

3. The learned counsel for the State assisted by the counsel for complainant has opposed the claim of the petitioner seeking quashing of the order declaring him proclaimed offender. While refuting the case of the petitioner detailed arguments concerning the merits of the case were made and it is argued that the offence alleged against the petitioner is serious and heinous. It is argued that the petitioner was aware about the pendency of the proceedings against him and had intentionally avoided appearance before the Court.

4. I have heard the learned counsel for the petitioner as well as the State and carefully perused the record of the case.

5. Perusal of the lower Court record, summoned by this Court, shows that vide order dated 29.07.2023 passed by the Judicial Magistrate, the arrest warrants issued against the accused were received back with

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the report of evading process. As such, the Court ordered initiation of proclamation proceedings against the petitioner for 02.09.2023. The proclamation was ordered to be published on or before 02.08.2023. However, vide order dated 17.08.2023 the petitioner was declared proclaimed offender and the case was fixed for 21.10.2023.

6. Warrant of arrest of a person is required to be issued by the Court under Section 70 of the Code of Criminal Procedure, 1973. Whereas, the proclamation for the person absconding is required to be made by the Court under Section 82 of the Code of Criminal Procedure, 1973. Both these sections of the Code operate in different circumstance and as such cannot be invoked simultaneously.

7. It is pertinent that as per Section 476 of the Code of Criminal Procedure, 1973, the warrant of arrest in compliance of provisions of Section 70 of the Code of Criminal Procedure is required to be issued in form No.2, contained in The Second Schedule of the Code of Criminal Procedure, 1973. The said Form No.2 is reproduced herein below for ready reference:

“FORM NO.2

WARRANT OF ARREST

[See Section 70]

To _____ (name and designation of the person or persons who is or are to execute the warrant).

Whereas (name of accused) of (address) stands charged with the offence of (state the offence), you are hereby directed to arrest the said _____ and to produce him before me. Herein fail not.

Dated, this _____ day of _____, 20 _____.

(Seal of Court)

(Signature)”



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Whereas, the Proclamation against an accused is required to be issued in FORM NO.4, contained in The Second Schedule of the Code of Criminal Procedure, 1973, which is reproduced hereunder:

“FORM NO.4

PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED

[See Section 82]

Whereas complaint has been made before me that _____ (name, description and address) has committed (or is suspected to have committed) the offence of _____, punishable under section _____ of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said _____ (name) cannot be found, and whereas it has been shown to my satisfaction that the said _____ (name) of absconded (or is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said _____ of _____ is required to appear at _____ (place) before this Court (or before me) to answer the said complaint on the _____ day of _____, 20 ____.

Dated, this _____ day of _____, 20 _____

(Seal of the Court)

(Signature)”

8. (Annexure P-8) placed on record of the case is a report furnished by ASI Himmat Ram dated 28.07.2023. In this report it is mentioned that this ASI had pasted a copy of the proclamation of Petitioner Vinod Kumar on his given address. Second copy was pasted near Dugri Chowk. One copy was pasted on notice board of the Court and he submitted his report with one copy of the proclamation. The said arrest warrant issued by the Judicial Magistrate Ist Class, Ludhiana, bearing this report by the ASI is reproduced as under:



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“Criminal Courts, Ludhiana

IN THE COURT OF DAVINDER SINGH, JMIC, LUDHIANA

*PROCLAMATION REQUIRING THE APPEARANCE OF
A PERSON*

(See Section 82)

State

Versus

Vinod Kumar

(ARREST WARRANT)

FIR NO./Year: 03/2023

Under Section: 307/27 IPC

Police Station: DUGRI LUDHIANA

To

Station House Officer

Police Station: DUGRI LUDHIANA

WHEREAS complaint/case has been made before me that VINOD KUMAR R/O HIRA LAL H.N.1034 ST NO.4 BLOCK A BHAJ HIMMAT SINGH NAGAR DUGRI LUDHIANA (or is suspected to have committed), and it has been returned to a warrant of arrest thereupon issued that the said State cannot be found, and whereas it has been shown to my satisfaction that the said State has absconded (or is concealing himself/herself to avoid the service of the said warrant); Proclamation is hereby made that the said State is required to appear before this Court (or before me) to answer the said complaint/case on 02.09.2023.

TAMILI IS DIRECTED TO EXECUTE THE PROCLAMATION

Sd/-

DAVINDER SINGH

JMIC/ Ludhiana”

(Underlining is mine for emphasis).

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9. Based upon the above report of ASI Himmat Ram dated 28.07.2023, on the back of the above quoted warrant of arrest issued by the Court for 02.09.2024, the Judicial Magistrate Ist Class, Ludhiana passed the order dated 29.07.2023, ordering initiation of proclamation proceedings against the petitioner, by recording that the arrest warrant of Vinod Kumar received back with the report of evading process.

10. The order dated 29.07.2023 is clearly a result of total non-reading of the report submitted by the ASI Himmat Ram dated 28.07.2023 and the Warrant of Arrest issued by the Court, as well as total non-application of judicious mind to the contents of the said warrant of arrest and report made overleaf the same. The above quoted warrant of arrest cannot by any stretch of imagination be construed as arrest warrant by dint of contents of the same. The innocuous language used in the arrest warrant does not make any sense, in as much as on the top of the document it is mentioned as warrant of arrest but shown to have been issued in reference to Section 82 of the Code of Criminal Procedure. Moreover, instead of name of accused it is mentioned therein that the State cannot find and the State has absconded.

11. A perusal of such warrant of arrest and report overleaf shows that the Warrant Serving Officer i.e. ASI Himmat Ram did not even try to contact the accused-personally to execute the Warrant of arrest. Rather, he considered the warrant of arrest as proclamation under Section 82 of the Code of Criminal Procedure, 1973 and allegedly simply pasted the publication (without there being any proclamation). In these circumstances there was no cogent material available before the Judicial

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Magistrate to conclude that the accused was evading arrest, as recorded in the order dated 29.07.2023.

12. Moreover, perusal of order dated 17.08.2023 passed by the Judicial Magistrate, declaring the petitioner as proclaimed offender in the case shows that the Magistrate relied upon report dated 28.07.2023 made by ASI Himmat Ram that he affixed copy of proclamation outside the house of accused and second copy at the notice board of the Court on 28.07.2023. The Magistrate thereafter, concluded that period of 30 days has elapsed since publication. It is totally inexplicable how the Judicial Magistrate concluded that after alleged publication of proclamation on 28.07.2023 the period of 30 days lapsed on 17.08.2023. Moreover, perusal of trial Court record shows that proclamation against the petitioner was ordered vide order dated 29.07.2023. Wherein, the proclamation warrants were directed to be executed on or before 02.08.2023 and the case was adjourned to 02.09.2023. The order dated 29.07.2023 passed by the Judicial Magistrate is reproduced below:

“State Vs Vinod Kumar

Present: Sh. MS Bhatti, APP for the State.

Accused Vinod Kumar absent.

Arrest warrants of Vinod Kumar received back with the report of evading process. Let his proclamation proceedings be initiated for 02.09.2023. Concerned Tamili is directed to execute proclamation warrants on or before 02.08.2023. He shall affix a copy of proclamation warrant on the conspicuous part of house of accused, a copy of proclamation warrant shall be affixed on the notice board of the Court. The Tamili shall come up in Court with the third copy of proclamation on 02.09.2023 for his statement.

Date of Order: 29.07.2023

Sd/-

(Davinder Singh)

Judicial Magistrate – Ist Class

UID NO. PB00569”



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13. In these circumstances it is unfathomable that how the accused-petitioner was declared proclaimed offender vide order dated 17.08.2023, which was not the date fixed in the case, that too on the basis of report of ASI regarding affixation of proclamation dated 28.07.2023, which is clearly made prior to even the order of the Court for issuance of proclamation. Not only this, Annexure P-9 placed on record of the case, is the copy of statement of ASI Himmat Ram, suffered by him in Court on 02.09.2023. The same is reproduced herein below:

“I have received proclamation of accused Vinod Kumar s/o Hira Lal and I went to house of the accused, but accused was not present at his house on 28.07.2023. I affixed one of proclamation outside the house of accused and second copy on notice board of the Court and on the third copy, I gave my report Ex.P1 on the proclamation Ex.P2 respectively. So the accused be declared proclaimed offender.

RO&AC
Sd/- Himmat Ram ASI

Sd/-
Davinder Singh
JMIC Ludhiana”
Dt: 2/9/23

14. The procedure adopted by the Learned Judicial Magistrate, in the present case runs contrary to the guidelines issued by the Hon’ble Supreme Court in case titled ***Raghuvansh Dewanchand Bhasin versus State of Maharashtra and another, 2011(4) RCR (Criminal), 212*** which are reproduced herein below:

“23. However, before parting with the judgment, we feel that in order to prevent such a paradoxical situation, we are faced with in the instant case, and to check or obviate the possibility of misuse of an arrest warrant, in addition to the statutory and constitutional requirements to which reference has been made above, it would be appropriate to issue the following guidelines to be adopted in all cases where non-bailable warrants are issued by the Courts :-

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- (a) All the High Court shall ensure that the Subordinate Courts use printed and machine numbered Form No. 2 for issuing warrant of arrest and each such form is duly accounted for;*
- (b) Before authenticating, the Court must ensure that complete particulars of the case are mentioned on the warrant;*
- (c) The presiding Judge of the Court (or responsible officer specially authorised for the purpose in case of High Courts) issuing the warrant should put his full and legible signatures on the process, also ensuring that Court seal bearing complete particulars of the Court is prominently endorsed thereon;*
- (d) The Court must ensure that warrant is directed to a particular police officer (or authority) and, unless intended to be open-ended, it must be returnable whether executed or unexecuted, on or before the date specified therein;*
- (e) Every Court must maintain a register (in the format given below), in which each warrant of arrest issued must be entered chronologically and the serial number of such entry reflected on the top right hand of the process;*
- (f) No warrant of arrest shall be issued without being entered in the register mentioned above and the concerned Court shall periodically check/monitor the same to confirm that every such process is always returned to the Court with due report and placed on the record of the concerned case;*
- (g) A register similar to the one in clause (e) supra shall be maintained at the concerned police station. The Station House Officer of the concerned Police Station shall ensure that each warrant of arrest issued by the Court, when received is duly entered in the said register and is formally entrusted to a responsible officer for execution;*
- (h) Ordinarily, the Courts should not give a long time for return or execution of warrants, as experience has shown that warrants are prone to misuse if they remain in control of executing agencies for long;*
- (i) On the date fixed for the return of the warrant, the Court must insist upon a compliance report on the action taken thereon by the*

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Station House Officer of the concerned Police Station or the Officer In-charge of the concerned agency;

(j) The report on such warrants must be clear, cogent and legible and duly forwarded by a superior police officer, so as to facilitate fixing of responsibility in case of misuse;

(k) In the event of warrant for execution beyond jurisdiction of the Court issuing it, procedure laid down in Sections 78 and 79 of the Code must be strictly and scrupulously followed; and

(l) In the event of cancellation of the arrest warrant by the Court, the order cancelling warrant shall be recorded in the case file and the register maintained. A copy thereof shall be sent to the concerned authority, requiring the process to be returned unexecuted forthwith. The date of receipt of the unexecuted warrant will be entered in the aforesaid registers. A copy of such order shall also be supplied to the accused.”

15. The above narrated sequence of events speaks volumes about the indifferent and casual manner of proceedings undertaken by the Judicial Magistrate, Ist Class, in the case while declaring the accused-petitioner as proclaimed offender. No proper Warrant of Arrest was issued and tried to be executed against the petitioner, before initiating proceedings under Section 82 of the Code of Criminal Procedure against him. Nor the proclamation under Section 82 of the Code was issued and executed in proper and lawful manner before declaring the petitioner as proclaimed offender vide order dated 17.08.2023. I find the course adopted by the Judicial Magistrate as antithesis to the provisions of Section 82 of the Code of Criminal Procedure. Section 82 of the Criminal Procedure Code 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



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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 specific 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 sub-section (1).]”

16. A Coordinate Bench of this Court while dealing with invocation of the provision of Section 82 of the Code of Criminal Procedure, against an accused in the case of ***Sonu v. State of Haryana***, **2021(1) RCR (Criminal) 319**, held as under:

“9. The essential requirements of Section 82 of the Cr.P.C., 1973 for issuance and publication of proclamation against an absconder and declaring him as proclaimed person/offender may be summarized as under:-



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(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 v. 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., 1973. (See *Rohit Kumar v. State of Delhi* : 2008 CrI. J. 2561).

(iii) The Court cannot issue the Proclamation as a matter of course because the Police are 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 v. Emperor* : AIR 1943 Patna 366 and *Devender Singh Negi v. State of U.P.* : 1994 CrI 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 v. State of Mysore* : 1969 CriLJ 826 and *Shokat Ali v. 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 v. State of Punjab (P&H)* : 2015 (8) RCR (CRIMINAL) 166 and *Ashok Kumar v. State 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., 1973. 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., 1973 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 v. 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



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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 v. 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., 1973. 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 v. State: 1958 CriLJ 965).

(xi) The conditions specified in Section 82(2) of the Cr.P.C., 1973 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 v. State of U.P. and another: 1994 CriLJ 1783 and Pal Singh v. The State: 1955 CriLJ 318)."

17. In view of the provisions of above quoted Section 82 of the Code of Criminal Procedure and the authoritative judgment interpreting the applicability of the provisions of Section 82 of the Code of Criminal Procedure, the issuance of proclamation in the present case is clearly not sustainable. No proper warrant of arrest was issued against the petitioner prior to issuance of proclamation. There was no material before the Judicial Magistrate while issuing proclamation that the petitioner tried to evade his arrest in the case, or has absconded or is concealing himself. The predominant requirement for invocation of provisions of Section 82 of the Code of Criminal Procedure is clearly lacking in the present case. Rather, the case put forth by the petitioner before this Court, that he is not residing at the address mentioned in the case, also clearly shows that he was never served with any warrants before issuance of proclamation against him.

18. The provisions of Section 82 of the Code of Criminal Procedure having serious ramifications qua the right of the accused



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concerning his presence in the criminal trial proceedings ought not be and cannot be invoked in casual and cavalier manner. The requirement of recording satisfaction, that the accused has absconded or is concealing himself so that warrant of his arrest cannot be executed, as embodied in Section 82 of the Code of Criminal Procedure, is to be scrupulously complied with based on relevant material available on record of the case in that regard. Non-adherence to said requirement while declaring the accused as proclaimed offender vitiates the proclamation proceedings initiated against the accused.

19. In view of the above findings, in the entirety of facts and circumstances of the present case, the present petition is allowed and the order dated 17.08.2023 (Annexure P-5) passed by the Judicial Magistrate, 1st Class, Ludhiana in FIR No.03 dated 05.01.2023, registered at Police Station Dugri, District Ludhiana, declaring the petitioner as proclaimed offender is quashed.

20. Pending application(s), if any, shall also stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

September 16, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No