

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

134

CRM-M-2212-2024 (O&M)  
Date of decision: 24.01.2024

Chanpreet Singh

...Petitioner

Versus

Inderjit Kaur and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sandeep Arora, Advocate  
for the petitioner.

Mr. G. S. Rawat, Advocate  
for respondent No. 1.

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 12.04.2019 (Annexure P-6), passed by the Judicial Magistrate First Class, Jalandhar, vide which the petitioner was declared a proclaimed offender in Criminal Complaint case No. COMI-279 of 2017, titled as *Inderjit Kaur vs. Chanpreet Singh and others* filed under Sections 420, 498-A and 406 of the IPC.
2. Brief facts of the present case are that the marriage between the petitioner and respondent No. 1 was solemnized on 01.02.2012. The petitioner used to live in Italy and used to come regularly to India. Out of the said wedlock, a child had also born. However, due to some temperamental

**Neutral Citation No.2024: PHHC:009161**

differences, a matrimonial dispute had arisen between them and respondent No. 1 had filed the aforesaid complaint against the petitioner and his family members. Vide order dated 04.08.2018, the petitioner and other accused were summoned by the trial Court for 25.09.2018. However, since the petitioner was residing in Italy, he could not appear before the trial Court, consequent to which, proceedings under Section 82 Cr.P.C. were initiated against him and he was declared a proclaimed offender, vide impugned order dated 12.04.2019.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that while declaring him a proclaimed offender, the proper procedure as laid down under Section 82 Cr.P.C. had not been followed by the trial Court. In fact, when the aforesaid complaint was filed by respondent No. 1, the petitioner was in Italy and he was never served at his ordinary place of residence in Italy. More so, now a compromise has been arrived at between the parties on 07.12.2023, which has been placed on record as Annexure P-7. The parties have decided to part their ways by seeking a decree of divorce by way of mutual consent. Learned counsel for the petitioner has further argued that subsequent to aforesaid compromise, respondent No. 1 has already withdrawn the aforesaid complaint, vide order dated 20.12.2023, passed by the trial Court. 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. 1/complainant has admitted to the factum of compromise between the parties and has submitted that he has instructions to say that respondent No. 1 has no objection if the impugned

Neutral Citation No.2024: PHHC:009161

order, declaring the petitioner a proclaimed offender, is quashed by this Court. He has further submitted that respondent No. 1, in pursuance of the compromise, has already withdrawn the aforesaid complaint on 20.12.2023.

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

6. 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 person, I am of the considered opinion that the impugned order dated 12.04.2019 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

7. 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;*

Neutral Citation No.2024: PHHC:009161

*(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)."*

8. 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.***

Neutral Citation No.2024: PHHC:009161

***State of U.P. : 1994 Cri 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.***

9. 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 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

**Neutral Citation No.2024: PHHC:009161**

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 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

**Neutral Citation No.2024: PHHC:009161**

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.

10. On applying the above discussed position of law to the peculiar facts and circumstances of the present case, it is apparent that the trial Court had not followed the proper procedure while declaring the petitioner a proclaimed offender. A perusal of the zimini orders, which have been placed on record, shows that after summoning the petitioner by way of publication in the newspaper firstly for 14.01.2019 and then for 27.02.2019, the trial Court recorded its satisfaction on 27.02.2019 that the accused persons are intentionally evading their arrest through non-bailable warrants and their presence could not be procured through non-bailable warrants. Therefore, the trial Court ordered for issuance of proclamation under Section 82 Cr.P.C. for 12.04.2019. When the case was fixed for 12.04.2019, on account of non-appearance of the petitioner, he was declared a proclaimed offender by the trial Court by passing the impugned order. It is clear from the above that the warrants of arrest issued against the petitioner were never executed. The trial Court has also not recorded in the impugned order whether the proclamation was affixed at the places as prescribed under Section 82(2) Cr.P.C. or not. More so, the complainant was very much aware that the petitioner was in Italy but the trial Court had not made any attempt to either ask the complainant or to give direction to contact any of the family members of the petitioner in order to know about his ordinary place of residence or to serve him there in

Neutral Citation No.2024: PHHC:009161

Italy through Ministry of External Affairs. The Courts are required to ensure that personal service of summons are effected upon accused before issuance of non-bailable warrants and in case the accused is residing abroad then a valid personal service has to be effected through embassy of India located at concerned foreign country. Reliance in this context can be placed upon *Jagjit Singh and others vs. State of Punjab : 2022 (4) RCR (Criminal) 241*. This Court can also not lose sight of the fact that a compromise has been arrived at between the parties on 07.12.2023, according to which, they have decided to obtain a decree of divorce by way of mutual consent and in pursuance thereof, even the complaint itself stands dismissed as withdrawn by the trial Court, vide order dated 20.12.2023. Therefore, the impugned order dated 12.04.2019 suffers from material illegalities and is liable to be quashed.

12. Accordingly, the present petition is allowed and the impugned order dated 12.04.2019 (Annexure P-6), passed by the Judicial Magistrate First Class, Jalandhar, vide which the petitioner was declared a proclaimed offender in Criminal Complaint case No. COMI-279 of 2017, titled as *Inderjit Kaur vs. Chanpreet Singh and others* filed under Sections 420, 498-A and 406 of the IPC, is hereby quashed along with all the subsequent proceedings.

24.01.2024

Waseem Ansari

(MANISHA BATRA)  
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes