

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

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CRM-M-2150-2024 (O&M)
Date of decision: 25.01.2024

Sukhjinder Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Gursimran Singh Bhatia, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, DAG, Punjab.

Mr. Saurabh Garg, Advocate
for respondent No. 2/complainant.

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 05.07.2023 (Annexure P-15), passed by the Sub Divisional Judicial Magistrate, Khadur Sahib in case titled as State vs. Sukhjinder Singh, arising out of FIR No. 90 dated 07.09.2021, registered under Section 376 IPC at Police Station Veerowal, District Tarn Taran, whereby he had been declared 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

statement of complainant/respondent No. 2 'K' (*name withheld*) alleging therein that she was married to one Prem Singh 2-3 years back but had no child out of the said wedlock. Since her husband was a drug addict, he used to beat her. She met petitioner Sukhjinder Singh, who used to work in the factory where her husband had also been working. They developed friendship and decided to get married with each other. She took a *panchayati* divorce from Prem Singh and came to her parental house. She alleged that the petitioner, on the pretext of performing marriage with her, had been maintaining sexual relations with her but he never performed marriage with her, despite giving several assurances. She prayed for taking action against the petitioner. The aforementioned FIR was registered and investigation proceedings were initiated. But the petitioner was never arrested. After completion of investigation and usual formalities, *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 05.07.2023.

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 person, the proper procedure as laid down under Section 82 Cr.P.C. had not been followed. After 20 days of registration of the aforementioned FIR, the petitioner had performed marriage with the complainant and they had been living together as husband and wife, vide Marriage Certificate (Annexure P-2). A compromise has also been reduced in writing on 21.11.2023 and the same has been placed on record as Annexure P-3. The factum of marriage between the parties was brought to the notice of

the police but they continued with the case. In fact, the petitioner was never served with the summons/warrants and he had been declared a proclaimed person 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.

4. Learned counsel for respondent No. 2/complainant has submitted that the petitioner had performed marriage with complainant/respondent No. 2 on 26.09.2021 and since then, they are living together as husband and wife. He has further submitted that he has instructions to say that complainant/respondent No. 2 has no objection if the order, declaring the petitioner as a proclaimed person, is set aside.

5. On the other hand, learned State counsel has submitted 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 person. 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 person, I am of the considered opinion that the impugned order dated 05.07.2023 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:-

(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 judgment 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 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 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 apparent that vide order dated 30.07.2022, since non-bailable warrants issued against the petitioner were received back unserved, fresh non-bailable warrants were issued by the trial Court for 17.09.2022. Thereafter, on the next eight consecutive dates, which are 17.09.2022, 15.10.2022, 05.11.2022, 03.12.2022, 09.01.2023, 04.02.2023, 04.03.2023 and 15.04.2023, non-bailable warrants issued against the petitioner were received back unexecuted. Thereafter, even on 20.05.2023,

non-bailable warrants were received back unexecuted. However, on an application filed by SI Avtar Singh for publication of proclamation for 05.07.2023. On 31.05.2023, the proclamation was reported to be effected. Thereafter, since the petitioner did not appear before the trial Court on 05.07.2023 i.e. after expiry of mandatory period of 30 days, he was declared a proclaimed person. It is, however, clear from the above that the warrants of arrest issued against the petitioner were never executed upon him. It is also revealed that even summons were never proved to be served upon him. It is further revealed that the trial Court had issued proclamation on the asking of Police, without satisfying itself that the petitioner has absconded or is concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence. Reliance in this regard can be placed upon *Bishnudayal Mohtan*'s case (supra) and *Devender Singh Neghi*'s case (supra). A perusal of impugned order does not reveal as to whether the proclamation was affixed at the house of the petitioner or not. More so, this Court can also not lose sight of the fact that immediately after registration of the FIR, the petitioner had performed marriage with the complainant on 26.09.2021 and since then, they had been residing together as husband and wife. As such, there was no chances that his presence could not be secured easily. Therefore, in my considered opinion, the petitioner was wrongly declared a proclaimed person in breach of the prescribed procedure. Therefore, the impugned order dated 05.07.2023 suffers from material illegalities and is liable to be quashed.

12. Accordingly, the present petition is allowed and the impugned order dated 05.07.2023 (Annexure P-15), passed by the Sub Divisional

Judicial Magistrate, Khadur Sahib in case titled as State vs. Sukhjinder Singh, arising out of FIR No. 90 dated 07.09.2021, registered under Section 376 IPC at Police Station Veerowal, District Tarn Taran, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

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

14. 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.

25.01.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes