

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-7452-2020

Decided on 01.03.2024

Dr. Parampreet Pal Singh Kalra

... Petitioner

VS.

District Appropriate Authority through Chairman-cum-Civil Surgeon,
Ferozepur & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Anurag Jain, Advocate for the petitioner

Mr. Rajiv Verma, DAG Punjab for respondent No.1

Sandeep Moudgil, J.

(1). This is a petition under Section 482 CrPC for seeking quashing of orders dated 03.05.2019 (Annexure P-9), whereby non-bailable warrants of the petitioner have been issued, as well as the orders dated 10.06.2019 and 22.07.2019, (Annexures P-12 and P-14) respectively, whereby proclamation under Section 82 of CrPC has been ordered to be issued, proclamation dated 26.07.2019 (Annexure P-15) and order dated 10.09.2019 (Annexure P-18), whereby the petitioner has been declared as proclaimed person, passed by learned Judicial Magistrate First Class, Zira, District Ferozepur, in complaint No. 35/2018-CHA/104/18-RBT/274/16/03/19, titled as Ramesh Pal Vs. Dr. Parampreet Singh Kalra and others (Annexure P-8), filed under Sections 3A, 5, 18, 23 and 29 of Preconception and Pre-Natal Diagnostic Technique (Prohibition of Sex Selection) Act 1994 (in short, the PNDT Act).

(2). Learned counsel contends that after investigation in FIR No.103 dated 16.09.2016, registered under Sections 3A, 5, 18, 23, 29 and under Rule 4 and 9 PNDT Act, 1994 at Police Station, Makhu, the petitioner was found

innocent. He submits that subsequently on the same subject, a complaint was also instituted and both the cases were clubbed, wherein the petitioner was summoned vide order dated 06.08.2018. According to him, as the summons were not effectively served, therefore, the trial Court adopted the procedure under Section 82 Cr.P.C. He submits that proclamation was ordered by the trial Court on 27.07.2019, for appearance of the accused on 28.08.2019 and it was affixed on 09.08.2019. He submits that the statutory period of thirty days was not given to the petitioner before declaring him proclaimed person. It is also pointed out that even otherwise, there was no reason for the petitioner to avoid his appearance as previously also, he had associated with the investigation in the FIR case.

(3). The counsel for the petitioner further submits that the proclamation is bad under Section 82(1) CrPC as the requirement of notice of not less than 30 days reckonable from the date of publication has not been fulfilled. He further submits that the proclamation has not been read out at a common place and the statement (Annexure P17) of Head Constable regarding affixation at a common place is not in conciliation with his report made on proclamation (Annexure P15) and that apart, the publication was not made in the local newspaper also. Reliance has been placed on **Jagmal Singh & Ors. vs. State of Haryana & Ors. 2015 (1) RCR (CrL) 300** wherein a Coordinate Bench of this Court observed that mere writing of proclamation on this document will not fulfill the conditions of issuance of proclamation under Section 82 CrPC.

(4). On the other hand, learned State counsel, on the basis of the averments made in the reply dated 04.03.2022, submits that the stand taken by

the petitioner that there is a gap of 11 days is wholly misconceived as the trial court has passed the order declaring proclaimed person on 10.09.2019 after a period of 30 days of issuing the proclamation on 09.08.2019. He further urged that the proclamation notice was issued by following the rules and regulations of the criminal jurisprudence and that the proclamation notice was received by the father of the petitioner who informed the serving officer that he will inform the petitioner when he comes back from Shimla.

(5). Reply has been filed by respondent No.2 wherein he averred that the as per his passport (Annexure P10), the petitioner had left India on 23.05.2019 and the zimni order is dated 06.08.2018 which indicates that the notice/summons in the complaint were issued way back in the year 2018 and the factum of pendency of the complaint was very much in the knowledge of the petitioner which is further fortified by the fact that the co-accused and the petitioner have filed petition for quashing the complaint as well as the summoning order.

(6). Heard learned counsel for the parties and gone through the record.

(7). While exercising the power under Section 482 CrPC, this Court is not averse to the proposition that in case the petitioner is allowed to surrender before the trial Court and his bail application be considered fresh subject to his joining the trial proceedings upon an undertaking that he will not commit any default in future, it would only facilitate the furtherance of trial to secure the ends of justice and will also prevent the abuse of process of law.

(8). The inherent powers of this Court to act *ex debito justitiae* to do the real and substantial justice for the administration of which it alone exists or to prevent abuse of process of Court has been well settled and strengthened by

the Apex Court in **Geo Varghese vs. State of Rajasthan and Anr.-2021(4) R.C.R. (Criminal) 361** wherein it has been observed that such inherent power being very wide in itself imposes solemn duty on Courts, requiring great caution in its exercise, which shall also be based on sound principles. The relevant observations as made in the aforesaid case law **Geo Varghese** (Supra) would suffice to consider herein, before culminating the final conclusion and the same read as under:-

“35. The scope and ambit of inherent powers of the Court under Section 482 Cr.P.C., or the extra-ordinary power under Article 226 of the Constitution of India, now stands well defined by series of judicial pronouncements. Undoubtedly, every High Court has inherent power to act ex debito justitiae i.e., to do real and substantial justice, or to prevent abuse of the process of the Court. The powers being very wide in itself imposes a solemn duty on the Courts, requiring great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power vested in the Court should not be exercised to stifle a legitimate prosecution. However, the inherent power or the extra-ordinary power conferred upon the High Court, entitles the said Court to quash a proceeding, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court, or the ends of justice require that the proceeding ought to be quashed.

*36. The following observations made by this Court in the case of **State of Karnataka Vs. L. Muniswamy & Ors., (1977) 2 SCC 699** may be relevant to note at this stage:-*

"The whole some power under Section 482 Cr.P.C., entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would

be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent power, both in civil and criminal matters, to achieve a salutary public purposes. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature.

(9). In **State of Haryana & Ors. Vs. Bhajan Lal & Ors., (1992) Supp (1) SCC 335**, the Apex Court held that it may not be possible to lay down any precise, clearly defined and inflexible guidelines or rigid formulae and to specify an exhaustive list of the cases, where such power should be exercised. However, by way of illustration, the Court laid down the following categories of cases wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice.

"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(10). In the case of **M/s. Zandu Pharmaceutical Works Ltd. & Ors. Vs. Mohd. Sharaful Haque & Anr., (2005) 1 SCC 122**, the Supreme Court observed as under :-

"It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

(11). The proclamation of a person has to be carried out under the provisions of Section 82(1) CrPC which prescribes that written proclamation requiring a person to appear at a specified place and time with notice of not less than 30 days has been given. Section 82(2) prescribes the manner of publication of proclamation which has to be (a) publicly read in some conspicuous place; (b) the proclamation notice should be affixed at a place where such person ordinarily resides; and (c) it should be affixed at the court house. Beside above, the Court may also direct publication of proclamation notice in local newspaper. Section 82 CrPC is reproduced hereunder:-

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 Sections 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).

(12). The above provisions of Section 82 are conjunctive in nature and all the three sub-clauses of clause (i) is required to be carried out simultaneously and in such situation, non-compliance of any of the provisions under Clause (i) or compliance of only selective provisions under Clause (i) renders the whole publication as *non est* and bad in the eyes of law.

(13). The trial court order of proclamation or the service report does not show that the proclamation was read out at a common conspicuous place. Further there is contradiction in the statement of the Head Constable who was engaged as serving official and his report of service dated 09.08.2019 (Annexure P15 page 65) wherein he reported that he had reached at the given address and inquired about the “Dr. Parampreet Singh Kalra” but since the person sitting at the reception did not know anything about “Dr. Parampreet Singh Kalra”, therefore, the said serving official affixed the proclamation upon the wall of the hospital. It is pertinent to note that a perusal of the challan form under Section 173 CrPC and the order dated 26.07.2019 (Annexure P15 colly), is clear enough which says that the proclamation notice was issued in the name of one “Dr. Parampreet Singh Kalra” whereas the name of the petitioner is Dr.Parampreet Pal Singh Kalra. Further the challan/order does not even

mention the father's name of the petitioner and thus undoubtedly, the proclamation proceedings were carried out in the name of a wrong person for which the petitioner cannot be held responsible for the error on the part of the prosecution.

(14). For publication under Section 82 (2) CrPC, 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) to (c) in Section 82 (2)(i) CrPC 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 as has been held by the Supreme Court **Pawan Kumar Gupta Vs. The State of W.B., 1973 CriLJ 1368.**

(15). Moreover, as per Section 82 (1) CrPC provides for written proclamation requiring a person to appear at a specified place and at a specified time and a clear notice of not less than 30 days, and such time has to be reckoned from the date of publication of such proclamation. However, in the present case, the order for issuance of proclamation (Annexure P-14) was passed on 22.07.2019; the proclamation (Annexure P-15) was issued on 26.07.2019 and received in the Police Station Makhu on 01.08.2019 and consequently the same was carried out on 09.08.2019, whereby the petitioner was directed to put in appearance on 20.08.2019, i.e. within a span of eleven days. Since the proclamation (Annexure P-15) does not provide a clear gap of

30 days, therefore the said proclamation certainly cannot be held to be a valid document being violative of Section 82(1) CrPC and as such, no penal consequences can thus be entailed against the petitioner. Reference can be made to the **CRM-M-14898-2024 (Rasneet Singh vs. State of Punjab & Anr.)** decided on 22.03.2024, wherein this Court, while summarizing the essential requirements of Section 82 of the CrPC for issuance and publication of proclamation against an absconder and declaring him as proclaimed person/offender, referred to the judgment of the Coordinate Bench of this Court in **Ashok Kumar Vs. State of Haryana and another, 2013 (4) RCR (Criminal) 550** and observed that the proclamation has to be issued by giving mandatory period of 30 days from the date of publication of the proclamation till the next date of hearing of the case, in the present case, the same has not been done. For reference, para 4 of **Ashok Kumar's** case (supra) being relevant is reproduced hereunder:-

“4. In view of the above provisions of Section 82(1) Cr.P.C., it is clear that the publication was effected on 9.2.2013 and the accused was directed to appear in the Court as per that publication on 6.3.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned order on 13.3.2013, the publication has been effected as per the provisions of Section 82 Cr.P.C. There was no order in the publication for the accused giving specified time and place to appear on 13.3.2013. Therefore, this order is not as per law and the same is set aside.”

(16). Thus, it can safely be held that there are loopholes in the process of proclamation of notice under Section 82 CrPC right from its issuance till its so-called service upon the accused inasmuch as the notice does not describe the

wrong name and particulars of the accused/petitioner nor the essential requirement for effective service/affixation was done by the service processing agency besides the mandatory requirement of notice period of not less than 30 days was also done away with and in such circumstances, the whole process becomes void from its very inception.

(17). In view of the above discussion, the orders dated 03.05.2019 (Annexure P-9), whereby non-bailable warrants of the petitioner have been issued, as well as the orders dated 10.06.2019 and 22.07.2019, (Annexures P-12 and P-14) respectively, whereby proclamation under Section 82 of CrPC has been ordered to be issued, proclamation dated 26.07.2019 (Annexure P-15) and order dated 10.09.2019 (Annexure P-18), whereby the petitioner has been declared as proclaimed person, passed by JMIC, Zira, in complaint (Annexure P-8) are ordered to be quashed with a condition that the petitioner, who is already on bail, shall continue to appear before the trial court until expressly exempted.

(18). Petition is allowed in the aforesaid terms.

01.03.2024
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

- Yes/No
- Yes/No