



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

102

CRM-M-7845-2023

Date of decision: 16.12.2024

Daler Singh

...Petitioner

V/s

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Amit Jhanji, Senior Advocate with
Mr. Swarn Tiwana, Advocate for the petitioner.
Mr. Adhiraj Singh Thind, AAG Punjab.
Mr. Munish Gupta, Advocate for respondent No.2
(through Video Conference).

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 482 of Cr.P.C., 1973, seeking quashing of order dated 28.08.2017 (Annexure P-6), passed by the learned Judicial Magistrate, 1st Class, Patiala in case FIR No.05 dated 27.05.2015 (impugned FIR) registered under Sections 406, 420, 494, 498-A/34 of Indian Penal Code, 1860 at Police Station NRI Patiala (Annexure P-1), whereby the petitioner was declared proclaimed offender as well as the other consequential arising therefrom.
2. While assailing the impugned order dated 28.08.2017 (Annexure P-6), the learned counsel for the petitioner has iterated that the order declaring the petitioner as proclaimed offender is not sustainable and is liable to be set-aside. It has been further iterated that the Court below, blatantly violating provisions of Cr.P.C., 1973 straightway proceeded to issue non-bailable warrants despite the fact that petitioner was not residing



in India at that time. It is further argued that no effective steps were taken in the case to serve the petitioner with warrants before issuance of proclamation against him. It has been further iterated that the impugned order has been passed based on fabricated and false reports. It is respectfully submitted by the learned counsel that the petitioner was neither personally served with any notice nor was any process ever properly executed or communicated to him. Learned counsel asserts that the impugned order has been passed in violation of the mandatory provisions of the Code of Criminal Procedure, 1973. According to the learned counsel, the petitioner was willing to face trial but was unable to return to India due to the non-renewal of his passport. Despite the best efforts of the petitioner, his passport was not reissued. It has been argued that the inability of the petitioner to join the proceedings was not deliberate. Moreover, the co-accused in the case have already been acquitted by the trial Court vide judgment dated 11.01.2023 (Annexure P-8). Hence the same evidence and circumstances apply to the petitioner, as the prosecution has failed to prove the case against all the accused person. Hence, the impugned order declaring the petitioner a proclaimed offender is unsustainable and deserves to be set-aside.

3. Learned State counsel has opposed the claim of the petitioner seeking quashing of the order declaring the petitioner as proclaimed offender in the case. 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. According to the



and after completion of the same, final report under Section 173 of Cr.P.C., 1973 was presented before the competent Court of jurisdiction. Furthermore, it has been submitted by the learned State counsel that the petitioner went to Italy after obtaining necessary permission from the learned trial Court but did not return and ultimately he was declared as proclaimed offender. Moreover, the factum of co-accused having been acquitted by the trial Court is of no avail to the petitioner as declaration of a person as proclaimed offender is owing to his dis-regard and disobedience in attending the judicial proceedings, when mandated by law. Moreover, it has been stated that the learned Court below followed the procedure as laid-down under Section 82 of the Cr.P.C., 1973 in letter and spirit and no discrepancy whatsoever is forthcoming from the records of the case.

4. Learned counsel appearing for the respondent No.2 has submitted that the entire petition of the petitioner is based on incorrect facts and an attempt has been made to mislead this Court. He submits that petitioner was granted permission to go abroad which was allowed vide order dated 17.12.2015 on furnishing adequate surety, which was further extended. However, the petitioner did not come back and resultantly, vide impugned order, he was declared proclaimed offender.

5. I have heard the learned counsel for the rival parties and carefully perused the record of the case.

6. The facts of the present case narrate a very sordid course of procedure, adopted by the trial Court. Perusal of the statement of the concerned Police official (Annexure P-9), which has been placed on record



personally handed-over to the father of the petitioner namely Surjit Singh at his house in the village. Furthermore, the father of the petitioner namely Surjit Singh categorically informed that the petitioner has been residing in Italy. He further informed that neither the petitioner had been in contact with the family nor was he aware about his exact/present address. As such, the Judicial Magistrate noted that the “proclamation warrants of arrest” issued against the petitioner remained served as per the report of the serving Constable and presumed that reasonable steps were undertook to bring the publication to the notice of the proclaimed person i.e. the petitioner and hence the publication process has been duly completed. As is apparent from the bare perusal of the impugned order dated 28.08.2017 (Annexure P-6) as also order dated 15.07.2017, the learned Judicial Magistrate, on the basis of the report forwarded by the serving official, observed that the service on the present petitioner has been effected and consequent to the petitioner’s non-appearance on the concerned dates recorded a satisfaction to the effect that the petitioner is absconding. Accordingly, the petitioner was declared proclaimed offender.

7. I find the course adopted by the Judicial Magistrate, as antithesis to the provisions of Section 82 of the Code of Criminal Procedure, 1973. The learned Judicial Magistrate has committed gross illegality by issuing the said proclamation under Section 82 of the Criminal Procedure Code, 1973, without complying with the mandatory requirements of law. Hence, the same is not sustainable in law and continuation of the same will amount to abuse of process of law. Section 82 of the Criminal Procedure

Code, 1973 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 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).]”

8. 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:-

(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 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. (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 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)."

9. In view of the provisions of above quoted Section 82 of 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. The impugned order dated 28.8.2017 (Annexure P-6) vide which the petitioner has been declared a proclaimed offender under Section 82 of the Code of Criminal Procedure, 1973 (CrPC), deserves to be set aside as it is vitiated by procedural irregularities and non-compliance with mandatory statutory requirements. A perusal of the sequence of events leading to the issuance of the proclamation reveals that the Ld. Judicial Magistrate First Class (JMFC) failed to adhere to the strict procedural safeguards enshrined under Section 82 of the Cr.P.C., thereby rendering the declaration nonest in law. The genesis of the matter lies in the order dated 15.02.2017, wherein the Ld. JMFC noted that the petitioner/accused had failed to appear before the Court and, as a consequence, cancelled his bail bonds and issued warrants of arrest. Subsequently, on three successive hearings i.e. 31.03.2017, 29.05.2017 and 30.05.2017, it was recorded that the arrest warrants issued against the petitioner had remained unexecuted. Finally, on 15.07.2017, the Ld. JMFC proceeded to note that “proclamation warrants of arrest” were duly served, culminating in the order declaring the petitioner a proclaimed offender. At the outset, it is pertinent to highlight that the procedure contemplated under Section 82(1) CrPC is mandatory and cannot be circumvented. For a person to be declared a proclaimed offender, the court must record its satisfaction that the accused is absconding or is deliberately concealing himself to evade the execution of arrest warrants.

This satisfaction must be based on cogent material placed before the court

and reflected in its orders. However, the orders passed by the Ld. JMFC in



the present case are conspicuously silent on this critical aspect. At no point did the Ld. JMIC record its satisfaction that the petitioner was absconding or deliberately evading arrest. The absence of such satisfaction strikes at the root of the proclamation proceedings and renders the subsequent order declaring the petitioner a proclaimed offender legally unsustainable.

9.1. Furthermore, the proceedings under Section 82 Cr.P.C., 1973 must strictly comply with the prescribed statutory requirements. In *Sonu's case (supra)* the Court laid down that a declaration under Section 82 cannot be issued mechanically or as a matter of course. As per condition (ii) of para 9 of *Sonu's case (supra)* mandates that the Court must specifically ascertain and record its satisfaction regarding the accused's intent to evade the process of law. The non-adherence to this cardinal principle in the instant case renders the impugned proclamation defective and without jurisdiction.

9.2. Additionally, the phrase "proclamation warrants of arrest," as recorded in the order dated 15.07.2017, betrays a fundamental misconception of law. Section 82 of Cr.P.C., 1973 does not contemplate the issuance of "proclamation warrants of arrest." Instead, it provides for the issuance of a proclamation in the form of a public notice, which must be published in a prescribed manner, giving the accused a stipulated time to appear before the Court. This procedural safeguard was neither followed nor recorded in the present case. In view of the above, the non-compliance with mandatory requirements under Section 82 Cr.P.C., 1973 and the failure to adhere to the guidelines laid down in *Sonu's case* renders the declaration of the petitioner as a proclaimed offender legally infirm. Consequently, the



impugned order deserves to be quashed and set aside in the interests of justice

10. It is pertinent to mention that by now it is a settled principle of law that the Court which issues the proclamation under Section 82 of Cr.P.C., 1973 must record its satisfaction that the accused in respect of whom the proclamation is being made, is absconding or concealing himself to evade his arrest. The predominant requirement for invocation of provisions of Section 82 of the Code of Criminal Procedure is clearly lacking in the present case. Perusal of order dated 28.08.2017 as also order dated 15.07.2017 (Annexure P-6) passed by the Judicial Magistrate shows that no satisfaction has been recorded while issuing the proclamation that the accused-petitioner has absconded or is concealing himself so that warrants of arrest against him cannot be executed. There was no material present before the Judicial Magistrate to record such a satisfaction. Rather, the case put forth by the petitioner before this Court, that he has never resided at the address given by the police in the case, clearly shows that he was never served with any warrants before issuance of proclamation against him.

11. Strangely the impugned order dated 28.08.2017 (Annexure P-6) as also order dated 15.07.2017 passed by the Judicial Magistrate, declaring the petitioner as proclaimed offender has relied upon statement of serving official to hold that the proclamation issued against the petitioner has been effected. The report annexed as Annexure P-9 (annexed with CRM-36185-2024 to the petition) shows that in this report it is mentioned that the police official went to serve the copy of the “proclamation of warrant of arrest” at



the respective house, one copy of proclamation at the Bus stand and the other at the notice Board of the Court. But the Judicial Magistrate while passing the impugned order declaring the petitioner as proclaimed offender in the case has been totally oblivious of said service report of proclamation by the police. As was enunciated in para 9 (vi) of the judgment in the case of *Sonu* (supra), 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.

12. The provisions of Section 82 of the Code of Criminal Procedure having serious ramifications qua the right of the accused concerning his presence in the criminal trial proceedings ought not be and cannot be invoked in casual and cavalier manner. The requirement of recording of 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.

12.1. Hence, no useful purpose would be served by keeping the criminal proceedings pending against the petitioner particularly when the co-



accused have already been acquitted by the Court below and it would be an appropriate case for exercise of powers under Section 482 of Cr.P.C. and to bring to an end the criminal proceedings initiated in the light of the FIR *ibid* against the petitioner.

13. 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 28.08.2017 (Annexure P-6), passed by the learned Judicial Magistrate, 1st Class, Patiala in case FIR No.05 dated 27.05.2015 (impugned FIR) registered under Sections 406, 420, 494, 498-A/34 of Indian Penal Code, 1860 at Police Station NRI Patiala (Annexure P-1), whereby the petitioner was declared proclaimed offender as well as the other consequential arising therefrom is quashed.

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

(SUMEET GOEL)
JUDGE

December 16, 2024
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No