

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

124

CRM-M No.7700 of 2024  
Date of Decision: 14.02.2024

RAJESH KUMAR .....Petitioner  
Vs  
STATE OF PUNJAB ....Respondent

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. Puneet Sharma, Advocate  
for the petitioner.

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**HARKESH MANUJA, J. (Oral)**

- [1]. By way of present petition under Section 482 Cr.P.C., prayer has been made for setting aside the order dated 26.10.2018 passed by the Addl. Chief Judicial Magistrate, Pathankot, whereby the petitioner was declared as proclaimed offender having been arrayed as an accused in FIR No.94 dated 25.10.2017 registered under Section 420 IPC at Police Station Division No.1, District Pathankot.
- [2]. Briefly stating, in the aforementioned FIR, on account of his non-appearance before the concerned Court, petitioner was declared as proclaimed offender vide the aforesaid order dated 26.10.2018 passed by the Addl. Chief Judicial Magistrate, Pathankot.
- [3]. Impugning the aforesaid order dated 26.10.2018, learned counsel for the petitioner submits that proceedings of Section 82 Cr.P.C., were concluded against the petitioner in violation of mandate of the provision itself as required under Section 82(2)(i)(a) Cr.P.C. was never complied with. He also submits that

perusal of proclamation/notice under Section 82 Cr.P.C. (Annexure P-2) nowhere shows that in case of non-appearance before the Court concerned, the petitioner would be declared as proclaimed offender, thus the impugned order is liable to be quashed.

[4]. Notice of motion.

[5]. On asking of the Court, Mr. Devinder Bir Singh, Sr. D.A.G., Punjab accepts notice on behalf of the respondent/State.

[6]. Learned State counsel while vehemently opposing the prayer made on behalf of the petitioner submits that the petitioner despite having knowledge about the proceedings and the FIR against him, deliberately chose not to submit himself to the jurisdiction of the Trial Court.

[7]. Learned State counsel also points out that statement of executant officer, wherein it was specifically stated that the proclamation was affixed at the door of the house of accused and another copy of the same was affixed at public place and third copy was affixed on the notice board outside the Court, thus there was due compliance under Section 82 Cr.P.C. before proceeding against the petitioner and as such the impugned order dated 26.10.2018 warrants no interference.

[8]. I have heard learned counsel for the parties and gone through the paper book.

[9]. Perusal of proclamation under Section 82 Cr.P.C. in the present case was ordered on 12.09.2018. The statement dated 26.10.2018 made by the executant/police official in this regard is reproduced hereunder:-

“Statement of HC Pawan Kumar No.374/PTk P.S. Division No.1, Pathankot. ON SA

*Proclamation under Section 82 Cr.P.C. qua accused Rajesh Kumar son of Shri Jang Bahadur Singh R/O Paradise Chamber Makhdumpura E.S. 225 Ball Flat No.1, Chadda Complex Lajpatrai Makhdumpura Jalandhar was marked to me. I went at the spot on 20.09.2018. Copy of proclamation was affixed at the door of the house of accused and another copy of the same was affixed at public place and third copy was affixed on the notice board outside the Court. My report on the proclamation is Ex.PX. This proclamation was duly effected, under rules.*

RO &AC

*Kewal Krishan  
ACJM, PTK, 26.10.2018”*

[10]. Perusal of the aforesaid statement shows that proclamation under Section 82 Cr.P.C. was never read publically at some conspicuous place of the town where the petitioner was residing and, thus there was no compliance of Sub-section 2(i)(a) of Section 82 Cr.P.C. Once the Section 82 Cr.P.C., regulates the liberty of an individual and the same emanates from Article 21 of the Constitution of India, thus becomes inviolable and as such on account of non-compliance of Sub-section 2(i)(a) of Section 82 Cr.P.C., the order dated 26.10.2018 passed by the Additional Chief Judicial Magistrate, Pathankot cannot be sustained and accordingly the same is set aside, however subject to payment of cost(s) of Rs.10,000/- to be deposited with District Legal Services Authority, Pathankot.

[11]. In the meanwhile, petitioner undertakes to avail his remedies in accordance with law including filing of application for regular bail/anticipatory

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bail and surrender before the Court concerned within a period of 10 days from today. Till then, no coercive steps be taken against the petitioner.

February 14, 2024

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(HARKESH MANUJA)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No