



CRM-M-9753-2024 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-9753-2024 (O&M)
Date of decision: 16.09.2024**

PRIYANKA RANI AND ANOTHER

... PETITIONERS

V/s

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Kulwant Singh, Advocate for the petitioners.

Mr. Adhiraj Singh, AAG, Punjab.

Mr. Harkirat Singh Ghuman, Advocate
for the complainant.

SUMEET GOEL, J.

1. Present petition under Section 482 of the Code of Criminal Procedure, is filed, seeking quashing of order dated 21.10.2023 (Annexure P-5), passed by the Learned Judicial Magistrate, 1st Class, Ludhiana in case FIR No.03 dated 05.01.2023, under Sections 294, 427, 323, 506, 148, 149 IPC, 1860 (Sections 307 and 354 IPC, 1860 added later on) registered at Police Station Dugri, District Ludhiana. Vide the impugned order dated 21.10.2023 the petitioners have been declared proclaimed offenders in the case.

2. While assailing the impugned order dated 21.10.2023 (Annexure P-5), the learned counsel for the petitioners argued, that the order declaring the petitioners as proclaimed offender is not

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sustainable and is liable to be set-aside. It is submitted that upon registration of the above-mentioned case against the petitioners, a cross-case on the behest of the petitioners was also registered against the complainant side in the above-mentioned FIR. It is further submitted that the petitioners and other co-accused appeared before the police and were granted bail, in view of the offences against them being bailable in nature. Thereafter, the petitioners were never called by the police. Rather, an application for conducting a fair inquiry in the above FIR filed by the petitioners is still pending with the police. It is submitted that the after registration of the cross-case against the complainant, offence under Sections 307 and 354 of IPC, 1860 were added in the above FIR by the police vide special report dated 24.01.2023. It is submitted that the complainant side has filed a Criminal Writ bearing No. CRWP-1031- 2023 before this Court, during the hearing of that case on 28.11.2023, it came to the knowledge of the petitioners that they have been declared proclaimed offenders in the case. It is submitted that earlier petitioner No.1, being the wife of Vinod Kumar and petitioner No.2 being the son of Vinod Kumar, along with Vinod Kumar were residing with the brother of Vinod Kumar at House No.1035, Gali No.4, Bhai Himmat Singh Nagar, Dugri, Ludhiana. But due to disputes having cropped up between the brothers, the petitioners along with Vinod Kumar on 30.06.2023 shifted to House No.1733, Phase 3, Karnail Singh Nagar, Pakhowal Road, Ludhiana. It is submitted that the petitioners lived at

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said address from 01.07.2023 to 20.08.2023 and thereafter, shifted to House No.37, Block 37, Gali No.2, Jagdish Nagar, Dugri, Tehsil and District Ludhiana. The petitioners have appended an affidavit of their previous landlord and a rent agreement of their subsequent place of residence with this petition. It is submitted that the petitioners were never served with any summons or warrants before declaring them proclaimed offenders in the case.

3. The learned counsel for the State assisted by the counsel for the complainant has opposed the claim of the petitioners seeking quashing of the order declaring them proclaimed offenders in the case. While refuting the case of the petitioners, detailed arguments concerning the merits of the case were made, and it is argued that the offence alleged against the petitioners is serious and heinous. It is argued that the petitioners were aware of the pendency of the proceedings against them and have intentionally avoided appearance before the Court.

4. I have heard the learned counsel for both the petitioners as well as the State and carefully perused the record of the case.

5. Perusal of the order dated 21.10.2023 passed by the Judicial Magistrate shows that the arrest warrants of the accused were received back with the report of the evading process. Along with this report, ASI Himmat Ram recorded his statement that he had affixed one copy of the proclamation outside the house of the accused persons and a second copy at the notice board of the Court on

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07.09.2023. The Court, after noting that 30 days have elapsed and petitioners have not put in appearance, declared them proclaimed offenders.

6. The facts of the present case narrate a very sordid state of affairs with respect to the course adopted by the trial Court in passing of the impugned order dated 21.10.2023. As is apparent from the bare perusal of the impugned order dated 21.10.2023 it is very much clear that the Judicial Magistrate received the arrest warrant issued against the petitioners, with the report that they were evading arrest, and on the same date the ASI Himmat ram suffered the statement that he published the copy of proclamation so issued on 07.09.2023 at the notice board of the Court premises. Moreover, perusal of the Lower Court Record, summoned by this Court, shows that the proclamation notice issued against the petitioners does not bear any date of its issuance by the Court. In this regard, it is appropriate to refer herein to Section 476 Cr.P.C., 1973 which provides that the forms set forth in the second Schedule of the Act, with such variations as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient. Form No.4 given in the Second Schedule provides for a model proforma to be used for issuing proclamation under Section 82 Cr.P.C., 1973. A perusal of the Form No. 4 so provided, shows that the proclamation must contain the date on which it is being issued. Therefore, in this regard it can be observed, that the

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proclamation so issued, in the facts of the present case, does not comply with necessary procedural requirements. Accordingly, the consequent order issued, on the basis of such a faulty proclamation, declaring the petitioners (herein) as proclaimed offenders also suffers from the vice of non compliance with the procedural requirement and hence, is not a good and sustainable order in the eyes of law. The date of appearance before Court mentioned in said proclamation is typed as 21.09.2023, which is thereafter, changed to 21.10.2023 by handwriting. The language used in the said proclamation does not makes any sense as it finds recorded that the State cannot be found, and it has been shown to the satisfaction of the Court that the State has absconded and proclamation was made for the State to appear before the Court. There is no reference to any particular date or instance when the petitioners were allegedly tried to be served by arrest warrants in the case. In the proclamation there is *iota* to conclude that the same was issued for appearance of the accused-petitioners in the Court.

7. Moreover, perusal of the service report furnished by ASI Himmat Ram, Police Station Dugri, overleaf the proclamation form, issued against the petitioners, shows that it was made on 07.10.2023. In this situation, it is unfathomable how ASI Himmat Ram deposed in his statement before the Court, that he published the proclamation on 07.09.2023, and the concerned trial Court too, without going into this material aspect and taking into account this procedural lapse,

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simpliciter recorded in the impugned order that the proclamation against the petitioners was published on 07.09.2023. The said factum of publication of proclamation as recorded by the Judicial Magistrate in his order, is inconsistent and contrary to the record in the shape of service report as furnished by ASI Himmat Ram.

8. As per the provisions of Section 82 it is crystal clear that the statutory period to be granted to the accused-absconder for appearance, from the date of publication of proclamation must not be less than 30 days. However, it is *prima facie* clear from the facts of the present case, that the proclamation was published on 07.10.2023 (as can be ascertained from the report of ASI Himmat Ram made overleaf the proclamation form). Accordingly, the conclusion drawn by the Judicial Magistrate in the impugned order dated 21.10.2023, that the mandatory statutory period of 30 days has elapsed since the publication of the proclamation, as such is not sustainable being *ex-facie* wrong.

9. On the basis of above-said findings, the only conclusion this Court can draw is that the impugned order dated 21.10.2023 (Annexure P-5) is clearly a result of total non-reading of the report furnished by the ASI Himmat Ram, as well as, total disregard of mandatory statutory procedure. The impugned order, is an outcome of non-application of judicial mind to the contents of the proclamation form and report made overleaf the same.

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10. The above narrated sequence of events, speaks volumes about the indifferent, cavalier and casual approach undertaken by the Judicial Magistrate Ist Class, during the course of proceedings in which the impugned order dated 21.10.2023 was passed vide which the accused-petitioners were declared as proclaimed offenders. No proper warrant of arrest was issued and tried to be executed against the petitioners, before initiating proceedings under Section 82 of Cr.P.C., 1973 against them. Nor the proclamation under Section 82 of the Code was issued and executed in proper, lawful and prescribed manner, before declaring the petitioners as proclaimed offender vide order dated 21.10.2023. I find the course adopted by the Judicial Magistrate as antithesis to the provisions of Section 82 of the Code of Criminal Procedure. 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 specific 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).]”

11. A Coordinate Bench of this Court while dealing with the invocation of the provisions 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:

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“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 CrI LJ 826 and Shokat Ali v. State of Haryana : 2020(2) RCR (CRIMINAL) 339).

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(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.

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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)."

12. In view of the provisions of above quoted Section 82 of the Code of Criminal Procedure and the authoritative judgment interpreting 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. No proper warrant of arrest was issued against the petitioners prior to issuance of proclamation. There was no material before the Judicial Magistrate while issuing proclamation that the petitioners tried to evade their arrest in the case, or have absconded or are concealing themselves. The predominant



requirement for invocation of provisions of Section 82 of the Code of Criminal Procedure is clearly lacking in the present case. Rather, the case put forth by the petitioners before this Court, that they are not residing at the address mentioned in the case, also clearly shows that they were never served with any warrants before issuance of proclamation against them.

13. The provisions of Section 82 of the Code of Criminal Procedure having serious ramifications qua the right of the accused concerning their presence in the criminal trial proceedings ought not be and cannot be invoked in casual and cavalier manner. The requirement of recording satisfaction, that the accused have absconded or are concealing themselves so that warrant of their 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 offenders vitiates the proclamation proceedings initiated against the accused.

14. 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 21.10.2023 (Annexure P-5) passed by the Judicial Magistrate 1st Class, Ludhiana in FIR No.03 dated 05.01.2023, under Sections 294, 427, 323, 506, 148, 149 IPC, 1860 (Sections 307 and 354 IPC, 1860 added later on) registered at Police Station Dugri,



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District Ludhiana, declaring the petitioners as proclaimed offenders is quashed.

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

(SUMEET GOEL)
JUDGE

September 16, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No