



CRM-M-10932-2024

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-10932-2024

Date of decision:27.08.2024

Rahul

....Petitioner

V/s

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sukesh Kumar Jindal, Advocate for the petitioner.
Ms. Mahima Yashpal, DAG Haryana.
None for respondent No.2.

SUMEET GOEL, J.

1. Present petition under Section 482 Code of Criminal Procedure, 1973 has been filed, seeking the quashing of order dated 16.09.2023 (Annexure P-1), passed by the Learned Judicial Magistrate, 1st Class, Rohtak in case ensuing from FIR No.397 dated 18.11.2022, registered at Police Station Old Sabzi Mandi, Rohtak, under Section 365 of the Indian Penal Code, whereby the petitioner was declared Proclaimed Person. Further, quashing of FIR No.36 dated 30.01.2024 registered at Police Station Old Sabzi Mandi under Section 174-A of the Indian Penal Code (Annexure P-2), registered in pursuance of the above-mentioned order dated 16.09.2023 is also prayed for.

2. It is argued on behalf of the petitioner that the order dated 16.09.2023 declaring the petitioner as proclaimed person has been passed in utter violation of the statutory requirements as enshrined in the Code of Criminal Procedure. It is submitted that since the learned Judicial Magistrate

failed to adhere to the mandatory requirements, germane to procedure



required to be followed before issuing proclamation against the petitioner, the illegality committed in issuing proclamation against the petitioner goes to the root of the case, and is liable to be quashed.

2.1 To buttress his submissions the learned counsel for the petitioner has submitted, that a bare perusal of the impugned order dated 16.09.2023 shows, that the learned Judicial Magistrate before issuing proclamation, has not recorded his satisfaction on the basis of any objective material, for reason to believe that the petitioner has absconded or is concealing himself, so that any warrant issued against him cannot be executed. It is submitted that the petitioner was never served with any summons or warrants in the FIR No.397 dated 18.11.2022, before initiation of proceedings under Section 82 of the Code of Criminal Procedure against him. It is submitted that in view of the non-compliance of the requirements of Section 82 of the Code of Criminal Procedure scrupulously before passing the impugned order dated 16.09.2023, renders the same prone to be quashed by this Court, so as to cure the illegality committed by the learned trial Magistrate. It is further submitted that the registration of subsequent FIR No.36 dated 30.01.2024 at Police Station Old Sabzi Mandi, Rohtak in compliance of the impugned order dated 16.09.2023, as a natural corollary, is also suffering from the same legal vice as the impugned order dated 16.09.2023 itself, and as such is not independently sustainable in law, and is also liable to be quashed by this Court.

3. Opposing the case of the petitioner, the learned counsel for the respondent-State has submitted that the impugned order declaring the petitioner as a proclaimed person has rightly been passed and it does not



order demonstrate that the learned Magistrate has considered all the relevant aspects of the case before ordering issuance of proclamation against the petitioner to secure his presence in the case. It is further submitted that in view of the petitioner having been declared proclaimed person by the learned Judicial Magistrate, the offence under Section 174-A of the Indian Penal Code, automatically is made out against the petitioner, and as such the FIR No.36 dated 30.01.2024 is rightly registered against the petitioner. With these submissions the dismissal of the petition filed by the petitioner for quashing is prayed for on behalf of the Respondent-State.

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

5. 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***, has 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 CrLJ (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)."*

6. Perusal of case record shows that prior to passing the impugned order dated 16.09.2023 (Annexure P-1), declaring the petitioner as proclaimed person, the learned Judicial Magistrate, passed the following order on 05.08.2023, which is annexed as Annexure P-4 to the petition:

"NBW issued against accused Sonu received back unexecuted. An application has been moved for issuing proclamation against accused. Keeping in view the contents mentioned in the application, same is hereby allowed. Let, the proclamation qua abovesaid accused be effected for 16.09.2023. The Executing Constable is directed to publish the proclamation one month prior to scheduled date of hearing, as mentioned above. Executing Constable is directed to come present on the date fixed to give statement in this regard. The proclamation should be published by fulfilling the following requirements: -

- 1. It shall be publicly read in some conspicuous place.*
- 2. It shall be affixed on some conspicuous part of the house in which such person ordinarily resides or to some conspicuous place of the village or town.*
- 3. Copy of proclamation shall also be affixed on conspicuous part of the Court-house."*



Perusal of the above-mentioned order dated 05.08.2023 passed by the Learned Judicial Magistrate apparently shows that the same does not withstand the scrutiny of requirements of Section 82 of the Code of Criminal Procedure as laid down in paras 9 (ii) and (iii) of the judgment passed by coordinate Bench of this Court in *Sonu's* case (supra). As such the impugned order dated 16.09.2023 declaring the petitioner as proclaimed person passed in furtherance of order dated 05.08.2023, is also not sustainable, being suffering from the vice of non-compliance of the provisions of section 82 of the Code of Criminal Procedure.

7. Adverting to the issue of sustainability of FIR No.36 dated 30.01.2024, having been lodged in compliance of the impugned order dated 16.09.2023 (Annexure P-1), since, the impugned order dated 16.09.2023 (Annexure P-1) itself has been found to be suffering from legal impropriety and thus, unsustainable in law, it would be an absurd to argue otherwise – that the FIR No.36 dated 30.01.2024, registered under Section 174-A, being an independent offence, remains sustainable. The FIR No.36 dated 30.01.2024, having been registered solely in compliance with the impugned order dated 16.09.2023, which in itself is legally unsound, cannot stand on its own. Consequently, the FIR No. 36 dated 30.01.2024, as a direct result of impugned order dated 16.09.2023, is also unsustainable in law.

8. 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 16.09.2023 (Annexure P-1) passed by the learned Judicial Magistrate, 1st Class, Rohtak in FIR No.397 dated 18.11.2022, registered under Section 365 of Indian Penal Code, at Police Station Old Sabzi Mandi,

Rohtak, declaring the petitioner as proclaimed offender, as well as the FIR



CRM-M-10932-2024

No.36 dated 30.01.2024 registered against the petitioner under Section 174-A of the Indian Penal Code, at Police Station Old Sabzi Mandi, Rohtak are quashed.

9. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

August 27, 2024
Ajay

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