

2024:PHHC:106944



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

119

CRM-M-13340-2024 (O&M)
Date of decision: 21.08.2024

Amarjit Singh and another ...Petitioners

Versus

State of Punjab ad another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Mandeep Singh Sachdev, Advocate
for the petitioners.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of order dated 12.09.2003, passed by the Judicial Magistrate First Class, Dasuya in case titled as *State vs. Amarjit Singh*, arising out of FIR No. 48 dated 12.03.2003, registered under Sections 420 and 120-B of IPC at Police Station Mukerian, District Hoshiarpur, whereby the petitioners had been declared as proclaimed offenders.
2. The present petition has been filed by the petitioners on the grounds and it has been argued by their counsel that the petitioners have been falsely implicated in this case. The petitioners were residing in France at the relevant time and they were never served with the notices/warrants issued by the trial Court as they were not residing at the given address and this fact was in the knowledge of the complainant as well as local police. More so, the petitioners had been declared as proclaimed offenders without following the

2024:PHHC:106944



proper procedure prescribed under Section 82 Cr.P.C. Hence, it is urged that the impugned order is liable to be set aside.

3. Learned State counsel has argued that the petitioners were having knowledge about the pendency of the trial and had intentionally avoided their appearance before the trial Court. Therefore, they were rightly declared as proclaimed offenders. Hence, it is urged that the petition is liable to be dismissed.

4. I have heard learned counsel for the parties and have also gone through the material placed on record.

5. On giving due deliberations to the contentions as raised by learned counsel for the parties and on an overall perusal of the orders passed by the trial Court from the date of initiating proceedings under Section 82 Cr.P.C. as against the petitioners till the date of declaring them as proclaimed offenders, I am of the considered opinion that the impugned order dated 12.09.2003 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

6. There are catena of judgments of different High Courts discussing the requirements necessary for issuance and publication of proclamation against an absconder under Section 82 Cr.P.C. and for declaring him as a proclaimed person/offender. These requirements have been discussed from time to time in ***Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561, Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561, Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366, Devender Singh Negi Vs. State of U.P. : 1994 CrL LJ (Allahabad HC) 1783, Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826, Shokat Ali Vs. State of***

2024:PHHC:106944



Haryana : 2020(2) RCR (Criminal) 339, Dilbagh Singh Vs. State of Punjab : (P&H) 2015 (8) R.C.R. (criminal) 166, Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550, Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368, Birad Dan Vs. State : 1958 CriLJ 965, Negi alias Debu Vs. State of U.P. and another, 1994 Cri LJ 1783 and Pal Singh Vs. The State : 1955 CriLJ 318.

7. In pursuance of order dated 05.04.2024, a status report has been received from Sub Divisional Judicial Magistrate, Mukerian. It is stated that the area concerned has now come under the jurisdiction of Mukerian. A perusal of the copies of zimni orders shows that on 03.07.2003, since the non-bailable warrants issued against the petitioners were received back unserved, the trial Court had ordered for issuance of proclamation against them for 09.08.2003. A bare perusal of this order shows that the trial Court before ordering for publication of proclamation has not recorded its proper satisfaction that the petitioners had absconded or were concealing themselves so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence, which was in violation of the provisions of Section 82(1) of Cr.P.C. Reliance in this regard can be placed upon ***Rohit Kumar Vs. State of Delhi : 2008 Cri. J. 2561.***

8. When the matter was taken up on 09.08.2003, the proclamation issued against the petitioners was received back unserved. The statement of serving official HC Gurdial Singh was recorded and the case was adjourned to 12.09.2003 for appearance of the petitioners. However, the case was taken up on 13.09.2003 instead of 12.09.2003 and due to non-appearance of the petitioners, they were declared as proclaimed offenders. A perusal of the

2024:PHHC:106944



impugned order itself shows that the proclamation was executed on 06.08.2003 requiring the petitioners to cause their appearance before the trial Court on 09.08.2003, which means that the petitioners were granted only 03 days' time to cause their appearance before the trial Court. Hence, the same was in clear violation of the provisions of Section 82(1) Cr.P.C., as per which, a specified time of not less than 30 days is required to be given to the accused from the date of publishing such proclamation which is mandatory in nature. Reliance in this regard can be placed upon ***Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826*** and ***Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339.***

9. Further, a perusal of the report of the serving police official shows that the proclamation was never read over in accordance with Section 82(2) of Cr.P.C. in some conspicuous place of the town wherein the petitioners ordinarily used to reside. Hence, it was in violation of the statutory provisions of Section 82(2) of Cr.P.C.. It is well settled that the three sub-clauses (a) to (c) in Section 82 (2)(i) of the Cr.P.C. 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. Reliance in this regard can be placed upon ***Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368*** and order dated 30.04.2024 passed by this Court in ***CRM-M-19419-2024, titled as Jagdeep Singh vs. State of Haryana.***

10. Accordingly, in view of the discussion as made above and also in view of the ratio of law as laid down in above cited authorities, the present petition is allowed and the impugned order dated 12.09.2003, passed by the Judicial Magistrate First Class, Dasuya in case titled as ***State vs. Amarjit***

2024:PHHC:106944



Singh, arising out of FIR No. 48 dated 12.03.2003, registered under Sections 420 and 120-B of IPC at Police Station Mukerian, District Hoshiarpur, whereby the petitioners had been declared as proclaimed offenders, is quashed with all consequential proceedings arising therefrom.

11. However, the petitioners are directed to surrender before the Court concerned within a period of four weeks, subject to order for grant of anticipatory bail, if any passed on his petition to be filed under Section 438 of the Cr.P.C. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioners shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court in accordance with law.

12. Needless to observe that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall be bound to dispose of the same expeditiously and that nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

13. Till the appearance of the petitioners before the trial Court, their arrest shall remain stayed.

14. It is made clear that in case the petitioners fail to appear before the trial Court within a period of four weeks from today, this petition shall be deemed to be dismissed.

21.08.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No