

2024:PHHC:123095



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

SR. No.272

**CRM-M-14328-2024
Date of decision:17.09.2024**

Harjinder Singh

...Petitioner

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Rahul Deswal, Advocate for the petitioner.

Mr.Deepinder Singh Brar, Sr. DAG, Punjab.

Mr. Gurcharan Dass, Advocate for the complainant.

N.S. SHEKHAWAT, J.

1. The present petition has been filed under Section 482 Cr.P.C. with a prayer to quash the impugned order dated 16.03.2019 (Annexure P-6) passed by the Sub Divisional Judicial Magistrate, Moonak, whereby the petitioner has been declared proclaimed offender in FIR No.70 dated 28.07.2015 under Sections 406/420/120-B IPC registered at Police Station Lehra, District Sangrur.

2. Learned counsel for the petitioner submitted that the petitioner was falsely involved in FIR in question. In fact, the police obtained warrants of arrest against the present petitioner, but the petitioner was never served.

Ultimately, the proclamation was issued against the petitioner, requiring his appearance before the trial Court. While referring to proclamation notice (Annexure P-2), learned counsel submitted that the said the proclamation was issued on 19.11.2018 and the petitioner was required to appear before the Court on 01.12.2018, i.e. after a period of about 12 days. Learned counsel has further referred to the statement of serving official (Annexure P-3), who clearly stated that he had pasted the copy of public notice at the house of the petitioner as well as notice board of the Court on 30.11.2018, that is one day prior to the date of hearing fixed before the trial Court. On 11.0.2019, since the period of 30 days had not expired, the case was adjourned to 11.01.2019 for the purpose already fixed. Again on 11.01.2019, the case was adjourned to 16.03.2019. On 16.03.2019, the statement of serving official, namely, ASI Sat Parkash was recorded and the same has been reproduced below:-

“Statement of ASI Sat Parkash no.763/Sgr. Posted at PS Lehra Stated that proclamation of accused Harjinder Singh was issued by this Court which is Ex.P15 and the same was marked tome for the purpose of execution and in compliance with the said order. I executed the proclamation of accused and affixed one of the copy of the proclamation at the house of accused, one copy at the house, one copy at bus stand and one at the notice board of the Court and my report regarding the same is Ex.P16, which is my hand writing, bears my signatures and I identify the same.”

3. Thereafter on the same day, i.e. on 16.03.2019, the petitioner was declared a proclaimed offender in the present case. Learned counsel for the petitioner submitted that the mandatory provisions of Section 82 of the

Code of Criminal Procedure were not followed in the present case and the impugned order is liable to be set aside by this Court.

4. On the other hand, learned State counsel assisted by learned counsel for the complainant have vehemently opposed the submissions made by the learned counsel for the petitioner on the ground that the petitioner had not appeared intentionally before the trial Court and thus, the impugned order is legally unsustainable. In fact, the petitioner had the knowledge of pendency of case before the trial Court and he has been rightly declared as proclaimed offender.

5. I have heard the learned counsel for the parties and perused the record carefully with their able assistance.

6. It has been held by this Court in the matter of **Ashok Kumar Vs. State of Haryana and Anr.2013(4) RCR (Criminal) 550 as under:**

3.“As per order dated 04.01.2013 passed by the learned Additional Chief Judicial Magistrate, Panipat the case has been adjourned for 06.03.2013 for issuing of proclamation under Sections 82 and 83 Cr.P.C.against petitioner Ashok Kumar. The order dated 06.03.2013, shows that proclamation issued against Ashok Kumar received back duly executed. Statement of Serving Constable was also recorded. Period of 30 days had not elapsed from the date of publication. Therefore, the case was adjourned to 13.3.2013. On that day, the petitioner was declared as proclaimed offender. The original record also shows that the statement of the serving official, namely, ASI Dilbag Singh was recorded on 6.3.2013, who stated that on 9.2.2013, he visited the place of residence of the accused along with proclamation. After reading publicly, the proclamation was affixed at conspicuous part of the house of the accused where he ordinarily resides. A copy of the proclamation was also affixed at conspicuous part of the Court house, which means

that the publication was effected on 9.2.2013 for 6.3.2013, which shows that after the publication of the notice, the accused was not given the mandatory period of 30 days to appear before the Court. The mere fact that the Court adjourned it after the period of 30 days will not be treated as compliance of the provisions of Section 82 (1) Cr.P.C. where it is provided that :-

“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.

(1) XX XX XX XX XX XX XX

(2) XX XX XX XX XX XX XX

4. *“In view of the above provisions of Section 82(1) Cr.P.C., it is clear that the publication was effected on 9.2.2013 and the accused was directed to appear in the Court as per that publication on 6.3.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned order on 13.3.2013, the publication has been effected as per the provisions of Section 82 Cr.P.C. There was no order in the publication for the accused giving specified time and place to appear on 13.3.2013. Therefore, this order is not as per law and the same is set aside”.*

7. Still further, it has been held by this Court in the matter of **Avtar Singh Vs. State of Punjab and Anr. in CRM-M-1866-2017** which is as under:-

“The above quoted provision is clear that through the proclamation made prior to declaration of a person as a proclaimed offender, he should be given not less than thirty days from the date of its proclamation to appear at a specified place and a specified time.

In the case in hand, thirty days were not given to the petitioner to appear before the Trial Court as the proclamation was made on 13.05.2011 requiring him to appear before the Trial Court on 14.05.2011. Thus, the proclamation and the subsequent order dated 03.09.2011 (Annexure P-2) declaring the petitioner to be a proclaimed offender do not confirm with the mandate of Section 82 (1) of the Code.

8. In the present case also, the mandatory provisions of Section 82 Cr.P.C. have not been complied by the trial Court. It is apparent from the statement of the serving constable as well as proclamation dated 19.11.2018 (Annexure P-2) that on 19.11.2018, the petitioner was required to appear before the court on 01.12.2018. Even the proclamation was published on 30.11.2018, i.e. one day prior to the date of hearing fixed before the trial Court, thus, the statutory notice of 30 days, as provided by Section 82 Cr.P.C. was not granted to the petitioner. Even though the matter was further adjourned twice, but it can never be construed as sufficient compliance of the provisions of Section 82(1) Cr.P.C. Thus, the trial Court had not complied with the provisions of Section 82 (1) Cr.P.C. while declaring the petitioner as proclaimed offender.

9. Still further, from a cumulative reading of the above referred provisions of the Code, it is evident that all the persons, who are absconding

or concealing themselves so that the warrants may not be executed, cannot be declared as proclaimed offender. Only where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under the offences mentioned in Section 82(4) Cr.P.C. and such person fails to appear at the specific place and time required by the proclamation, the Court may pronounce such person as proclaimed offender. However, if the proclamation is respecting the offence, other than the offences mentioned in Section 82(4) Cr.P.C., then such persons, who are absconding and concealing themselves to affect the execution of warrants of arrest, could be declared as proclaimed persons. From a plain reading of the provisions of Section 82 of Cr.P.C., it is evident that there is a distinction between a proclaimed person and a proclaimed offender. The said distinction is further reinforced by the provisions of Section 174-A IPC. As per Section 174-A IPC, if a person is declared as “proclaimed person” then he shall be punished with imprisonment for a term, which may extend to three years and or fine or both and where a declaration has been made in sub-section 4 of Section 82 Cr.P.C. pronouncing him as a “proclaimed offender”, he shall be punished with the imprisonment for a term which may extend to seven years and shall also be liable to fine. Thus, from the scheme of Code itself, it is evident that the words “Proclaimed Person” and “Proclaimed Offender” have different meanings and different punishments have been provided under the statute for the said violation of law. Even similar observations have been made by this Court in the matter of **Satinder Singh Vs. The State of U.T., Chandigarh and another, 2011(2) R.C.R. (Criminal) 89.**

10. Now adverting to the facts of the present case, it is clearly made

out that the trial Court had wrongly declared the petitioner as proclaimed

offender. In the present case, the FIR was got registered under Sections 406/420/120-B IPC registered at Police Station Lehra, District Sangrur and at the worst, he could have been declared as a proclaimed person and not a proclaimed offender. Thus, the impugned order is liable to be set aside on this score also.

11. Still further, Section 82 (2) Cr.P.C. provides for the manner, in which a proclamation has to be published by the trial Court and the same has been reproduced below:-

“82(1) xxx xxx xxx xxx
 xxx xxx xxx xxx

82(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.*

82(3) xxx xxx xxx xxx
 xxx xxx xxx”

12. In the present case also, it is apparent from the statement made by the serving official ASI Satya Parkash (Annexure P-5) that he had affixed a copy of proclamation at the house of the accused, another copy at the bus stand and one was pasted on the notice board of the Court. However, he did not state that he had read the proclamation publically in some conspicuous place of the town or the village, in which such person ordinarily resides.

Thus, in the present case, the serving official had not complied with the

mandatory provisions of Section 82(2)(i)(a) Cr.P.C. and due to the non-compliance of the said provisions of law, the impugned order is liable to be set aside by this Court.

13. In view of the above discussion, this Court has no hesitation to hold that the trial Court had not complied with the mandatory provisions of law and accordingly the impugned order is illegally unsustainable and is hereby set aside.

14. The present petition stands allowed. Pending application, if any, shall also stand disposed of.

15. Since the matter has remained pending before the trial Court for a very long period, no purpose will be served by sending the petitioner behind bars after such a long period. Consequently, the petitioner is directed to surrender before the trial Court/Area Magistrate/Duty Magistrate within a period of six weeks from today and on his surrender, he shall be admitted to bail by the concerned court on his furnishing bail bonds/surety bonds to the satisfaction of the concerned court. In case, the petitioner does not surrender within a period of six weeks from today, the present petition shall be deemed to be dismissed by this Court.

17.09.2024
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned:	YES / NO
Whether Reportable:	YES / NO