

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

CRM-M-15443-2023 (O&M)
Date of decision: 12.01.2024

Kalia ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mrs. G. K. Mann, Sr. Advocate with
Ms. Simrat Kaur, Advocate and
Mr. Gursharan Singh, Advocate
for the petitioner.

Mr. R. S. Khaira, DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of order dated 30.09.2022 (Annexure P-3), passed by the Court of the Judicial Magistrate First Class, Jalandhar in case titled as *State vs. Kalia and others*, arising out of FIR No. 32 dated 17.04.2022, registered under Sections 376-D and 506 of IPC at Police Station Lambra, District Jalandhar, whereby he has been declared a proclaimed offender.
2. Briefly stated facts of the case are that the aforementioned FIR was registered on the statement recorded by the complainant/prosecutrix 'R' (*name withheld*) alleging therein that about 3 ½ months back at about 11:00 AM, she had gone to the land of Red Cross to get some grass for her cows.

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The prosecutrix saw a lady standing there, who called her and when the prosecutrix went towards her, the said lady pushed her inside the hut, where three men were sitting. They were Juree, Lambur and Kalia, sons of Babudeen and the fourth person, who was sitting outside, was unknown to her. Juree and Lambur caught hold of her from her arms and Kalia ravished her. The persons, who was sitting outside, was recording the video of the said act. The accused persons threatened the prosecutrix that if she disclosed the incident to anyone, they would kill her father and would share the video on social media. Due to fear, the prosecutrix did not disclose the incident to anyone. Even thereafter, petitioner Kalia used to make physical relations with her by extending threats of the said video. As her health deteriorated, she was taken to hospital by her father on 16.04.2022 when she disclosed these facts to him. She prayed that legal action be taken against the culprits. After registration of the FIR, investigation proceedings were initiated. During the course of investigation, accused Juree and Lambur were found innocent and accused/petitioner was never arrested. Petitioner filed an application seeking grant of anticipatory bail before the Additional Sessions Judge, Jalandhar but the same was dismissed, vide order dated 19.05.2022. Since the presence of the petitioner could not be secured before the Court despite issuance of non-bailable warrants, proceedings under Section 82 Cr.P.C. were initiated and he was declared a proclaimed offender by passing the impugned order dated 30.09.2022. The petitioner approached this Court for grant of anticipatory bail by way of filing a petition under Section 438 Cr.P.C. However, keeping in view the fact that the petitioner had been declared a proclaimed offender, the said petition was dismissed as withdrawn with liberty to petitioner to

challenge the order declaring him a proclaimed offender, vide order dated 08.12.2022 passed in **CRM-M-334100-2022**. Hence, the present petition.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he had been falsely implicated in this case. False allegations of rape were levelled against him.

Learned senior counsel for the petitioner has further argued that the impugned order, declaring the petitioner a proclaimed offender, is not sustainable in the eyes of law as the proper procedure prescribed under Section 82(1) Cr.P.C. was not followed as the mandatory period of 30 days was not granted to petitioner to cause appearance before the Court. It is also argued that as per Section 82(4) Cr.P.C., if a person accused of offence(s) punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of IPC fails to appear at the specified place and time required by the proclamation, then the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect. However, since the FIR in question was registered under Sections 376-D and 506 of the IPC against the petitioner, he could not have been declared a proclaimed offender and at best, the petitioner could have been declared him a 'proclaimed person'. With these broad submissions, learned senior counsel for the petitioner has argued that the impugned order is liable to be set aside. To fortify her arguments, learned senior counsel for the petitioner has placed reliance upon orders dated 05.08.2023, 16.07.2021, 16.05.2022, passed by the coordinate Benches of this Court in CRM-M-13638-2013, CRM-M-25088-2021 and CRM-M-48457-2021, respectively.

4. Learned State counsel has resisted the petition by submitting that there is no infirmity in the impugned order and the petitioner has rightly been declared a proclaimed offender as he was running away from the process of Court. He has, thus, prayed for dismissal of the present petition.

5. I have heard learned senior counsel for the petitioner at length and have also gone through the material placed on record.

6. On giving due deliberation to the contentions as raised by learned senior counsel for the parties and on 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 petitioner till the date of declaring him a proclaimed offender, I am of the considered opinion that the impugned order dated 30.09.2022 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

7. At the outset, it would be relevant to refer to the provision of Section 82 Cr.P.C., which provides for publication of proclamation against the person absconding. It 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 specified 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;

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(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 section 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 subsection (1)."

8. 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 Cri LJ (Allahabad HC) 1783, Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826, Shokat Ali Vs. State of 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, 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.

9. The position of law as laid down in the above cited authorities 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.
- (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.
- (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.
- (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.
- (v) Where the period between issuance and publication of the proclamation and the specified date of hearing is less than thirty

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days, the accused cannot be declared a proclaimed person/offender and the proclamation has to be issued and published again.

(vi) The Proclamation has to be published in the manner laid down in Section 82 (2) of the Cr.P.C.. 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. 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. 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.

(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.. Such statement in writing by the Court is declared to be conclusive evidence that the requirements of

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Section 82 have been complied with and that the proclamation was published on such day.

(xi) The conditions specified in Section 82(2) of the Cr.P.C. 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.

10. On applying the above discussed position of law to the peculiar facts and circumstances of the present case, it is noticed that learned senior counsel for the petitioner has placed on record a copy of order dated 06.08.2022, whereby it was observed by the Magistrate that since the accused is absconding, the warrants issued against them cannot be executed and it was ordered that written proclamation be issued requiring the accused persons to appear in the Court on 31.08.2022. Subsequent thereto, the proclamation notice dated 09.08.2022 was issued directing the petitioner to cause appearance on 31.08.2022, which shows that the Magistrate had not accorded the mandatory period of 30 days to the petitioner to cause his appearance in the Court. It is revealed from the statement of serving police official ASI Karnail Singh that on 28.08.2022, he had affixed the proclamation at the house of the petitioner and a copy of the same was affixed at a conspicuous part of the village as well as Court premises, which showed that the publication was effected only on 28.08.2022 requiring the petitioner to cause appearance before the Court on 31.08.2022, thereby according him only 03 days to cause his appearance. Hence, the same was in clear violation of the provisions of Section 82(1) Cr.P.C. Vide order dated 31.08.2022, the proclamation issued against the petitioner was received back duly executed, however, since the statutory period of 30 days had not elapsed, the matter was

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adjourned to 30.09.2022 and on 30.09.2022, the petitioner was declared a proclaimed offender. The Magistrate, while passing the impugned order, had failed to consider the fact that it could not extend the time by simply adjourning the case for awaiting the appearance of the petitioner and was mandatorily required to issue proclamation again for publication thereon in accordance with provisions of Section 82(1) Cr.P.C. Undoubtedly, under Section 82 Cr.P.C., it is only in cases detailed under Section 82(4) Cr.P.C. that a person can be declared a proclaimed offender, whereas the case of the petitioner, being booked for commission of offences punishable under Sections 376-D and 506 of IPC, does not fall under this provision and as such he could not be declared a proclaimed offender. However, still in my considered opinion, this would not affect the status of the petitioner as a proclaimed person otherwise and would not cause prejudice to the action initiated against him for failure to appear in terms of the proclamation issued. It follows that the petitioner was wrongly declared a proclaimed offender in breach of the prescribed procedure. Therefore, the impugned order dated 30.09.2022 suffers from material illegalities and is liable to be quashed.

11. Accordingly, the present petition is allowed and the impugned order dated 30.09.2022, passed by the Judicial Magistrate First Class, Jalandhar in case titled as ***State vs. Kalia and others***, arising out of FIR No. 32 dated 17.04.2022, registered under Sections 376-D and 506 of IPC at Police Station Lambra, District Jalandhar, whereby he has been declared a proclaimed offender, is quashed with all consequential proceedings arising therefrom.

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12. However, the petitioner is 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 petitioner 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.

13. 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.

12.01.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes