

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-14817-2023 (O&M)

Date of Decision: 22.03.2024

Sukhmandeep Singh ...Petitioner

Versus

State of Punjab & another ...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Vivek K. Thakur, Advocate, for the petitioner.

Mr. Vishavjeet Singh Virk, DAG, Punjab.

Ms. Vaishali, Advocate, for
Mr. Virender Singh, Advocate, for the complainant.

GURVINDER SINGH GILL, J. (Oral)

1. At the very outset, learned counsel submits that at this stage the petitioner restricts his prayer to challenge only order dated 10.12.2018 (Annexure P-7) passed by the Additional Chief Judicial Magistrate, Kapurthala, whereby he has been declared a proclaimed offender in respect of FIR No.187 dated 26.10.2015 registered at P.S. Sadar Kapurthala, District Kapurthala, under Sections 323, 325, 341, 342, 148, 149 IPC.
2. Learned counsel submits that in the instant case the mandatory provisions of Section 82 Cr.P.C. have not been complied with in letter & spirit inasmuch as a clear period of 30 days w.e.f. the date publication was actually effected till the date nominated for causing appearance was not afforded. Learned counsel in this regard has drawn the attention of this

Court to order dated 27.09.2018 (Annexure P-5) vide which the learned trial Court ordered for issuance of proclamation for securing the presence of the petitioner so as to cause appearance on 14.11.2018.

3. A perusal of the proclamation notice (Annexure P-3) would indicate that the said notice was actually issued by the Court on 05.11.2018 requiring the petitioner to cause appearance on 14.11.2018. Further, a perusal of order dated 14.11.2018 (Annexure P-6) would show that the trial Court had recorded the statement of the serving official, who stated that the proclamation had been effected on 10.11.2018. However, the trial Court chose to further adjourn the matter to 10.12.2018, as the period of 30 days w.e.f. from the date of effecting proclamation had not elapsed. It was, thereafter, vide order dated 10.12.2018 (Annexure P-7), the trial Court declared the petitioner as a proclaimed offender.
4. A perusal of the aforesaid orders indicate that while the trial Court had directed issuance of proclamation requiring the petitioner to cause appearance on 14.11.2018, but the proclamation was actually effected only on 10.11.2018. In other words, as on 10.11.2018 when proclamation was effected, the petitioner was left with only 4 days to cause his appearance on 14.11.2018 i.e. the date fixed for causing appearance. Although the trial Court did further adjourn the matter, as the period of 30 days has not been afforded, but such like adjournment would not cure the defect which had already crept in, as has been held in Ashok Kumar Vs. State of Haryana 2013(4) R.C.R. (Criminal) 550 and also in a judgment dated 26.03.2021 rendered by this Court in CRM-M-14209-

- 2021 titled '*Anita Sharma Vs. State of Punjab*'. In other words, it can safely be held that the provisions of Section 82 Cr.P.C. have not been complied with in letter & spirit.
5. Consequently, the impugned order dated 10.12.2018 (Annexure P-7) cannot sustain and is hereby set aside.
6. It is, however, clarified that it shall be open to the petitioner to move a fresh petition for quashing of the FIR in question on the basis of a compromise.

22.03.2024

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(GURVINDER SINGH GILL)
JUDGE

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