

...Petitioner

State of Punjab and Others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Jasraj Singh, Advocate
for the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

Mr. Imran Ahmad Ali, Advocate
for respondents No.2 and 3.

N.S.Shekhawat J.

1. The petitioner had filed the present petition under Section 482 Cr.P.C with a prayer to quash the FIR No.68 dated 06.06.2020, registered under Sections 469,509,153-A of IPC and 66 (D) of I.T Act and Section 3(1) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities)Act,1989, Police Station Mehtiana, District Hoshiarpur and all subsequent proceedings arising therefrom on the basis of the compromise between the parties.

2. A further prayer was made to set aside the order dated 11.04.2022 (Annexure P-4), passed by the Court of Judicial Magistrate Ist Class, Hoshiapur, whereby the petitioner was declared as a “proclaimed offender”.

3. At the time of arguments on 12.04.2023, the petitioner had confined his prayer only to quash the order dated 11.04.2022 (Annexure P-4), passed by the Court of Judicial Magistrate Ist Class, Hoshiapur, whereby the

petitioner was declared as a “proclaimed offender” and the submissions have been advanced by learned counsel for the petitioner only for the said relief.

4. Learned counsel for the petitioner contended that the FIR in the present case was registered on 06.06.2020 and thereafter on 18.11.2021, non-bailable warrants were ordered to be issued against the present petitioner for 29.11.2021. While referring to the zimni orders Annexure P-2, learned counsel submitted that the petitioner was not served, still the non-bailable warrants were again ordered to be issued for 07.12.2021. On 07.12.2021, again non-bailable warrants were ordered to be issued for 13.12.2021. Vide order dated 13.12.2021, the Trial Court held that non-bailable warrants of the petitioner had been served back unexecuted and the proclamation was ordered to be issued for 03.02.2022. On 03.02.2022, the case was taken up by the Trial Court and it was found that the mandatory period of 30 days had not lapsed and the matter was ordered to be adjourned to 11.04.2022. Even it was found that the proclamation was published by the serving constable on 02.02.2022 i.e merely one day before the date fixed for appearance of the petitioner as per the proclamation. Learned counsel for the petitioner placed reliance on the statement made by serving constable and the statement of Malkit Singh Chowkidar (Annexure P-6) to contend that the proclamation was published on 02.02.2022, whereas the matter was listed for appearance of the accused on 03.02.2022. Consequently, even the Trial Court had realized that the statutory period of 30 days have not lapsed after the publication and the case was adjourned to 11.04.2022, only for the purpose of fulfilling the requirements of 30 days, as provided under Section 82 of the Cr.P.C. Apart from that, learned counsel also submitted that the petitioner has been wrongly declared as a

“proclaimed offender”.

5. On the other hand, learned State counsel had vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner had intentionally not appeared before the Trial Court for several months and is not entitled for any relief. It was submitted that the petitioner had the knowledge of pendency of the proceedings against him, however, he chose not to appear before the Trial Court and the petition is liable to be dismissed. However, learned State counsel could not rebut the factual submissions made by learned counsel for the petitioner in the present case.

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, this Court has no hesitation to hold that the mandatory provisions of Section 82 of the Cr.P.C have not been complied by the Trial Court. Vide the order dated 13.12.2021, the proclamation of the accused was ordered to be issued for 03.02.2022, however, from the statement of the serving constable as well as the statement of Malkit Singh Chowidar, it is evident that the proclamation was published on 02.02.2022 i.e one day prior to the date of appearance fixed before the Trial Court and the statutory notice of 30 days was not granted to the petitioner and since the period was less than 30 days, the case was adjourned to 11.04.2022. However, the adjournment to 11.04.2022, can never be construed as sufficient compliance of the provision of Section 82 (1) of the Cr. P.C. Thus, in view of the mandatory provisions of Section-82 of Cr.P.C and the ratio laid down by this Court in the matter of **Ashok Kumar and Avtar Singh (supra)**, it can be safely concluded that 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. From the above referred discussion, it is evident that the trial Court had wrongly declared the petitioner as proclaimed offender. In the present case, the FIR was got registered by complainant on 06.06.2020, under Sections

469,509,153-A of IPC and 66 (D) of I.T Act and Section 3(1) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities)Act,1989, Police Station Mehtiana, District Hoshiarpur. Still further, the matter had remained pending before the Trial Court. Thus, it is evident that no purpose would be served by sending the petitioner behind the bars after such a long period.

11. In view of the above discussion, the impugned order is illegal and unsustainable and is liable to be quashed by this Court.

12. Consequently, the petitioner is permitted to surrender before the learned 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. The Court, which admits the petitioner to bail, shall also be at liberty to impose such reasonable conditions, as provided by law. 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.

13. The petition is disposed off in above terms.

(N.S.SHEKHAWAT)
JUDGE

29.01.2024
hitesh

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