



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

114-2 CRM-43101-2024 in/&
CRM-M-17068-2019 (O&M)
Date of decision: 26.11.2024

Yogesh ...Petitioner
V/s
State of Punjab ...Respondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sarvesh Kumar Gupta, Advocate for the petitioner.
Mr. Yuvraj Singh, AAG Punjab.

SUMEET GOEL, J. (Oral)

CRM-43101-2024

The present application has been filed seeking preponment of
the main petition which is slated to be fixed for hearing on 22.01.2025.

In view of the submission made by learned counsel for the
applicant-petitioner as also the reasons mentioned in the application, the
same is allowed. The main case, which is slated to be fixed for hearing on
22.01.2025 is preponed to today itself i.e. 26.11.2024.

CRM-M-17068-2019

With the consent of learned counsel for the parties, the main
case is taken on Board today itself.

1. Present petition has been filed under Section 482 of Cr.P.C.,
1973, seeking quashing of order dated 02.01.2019 (Annexure P-5), passed
by the learned Judicial Magistrate, 1st Class, Hoshiarpur in case FIR No.64
dated 30.05.2018 (impugned FIR) registered under Sections 363, 366 of



Indian Penal Code, 1860 at Police Station Bullowal, District Hoshiarpur, whereby the petitioner was declared proclaimed offender.

2. While assailing the impugned order dated 02.01.2019 (Annexure P-5), the learned counsel for the petitioner argued, that the order declaring the petitioner as proclaimed offender is not sustainable and is liable to be set-aside. It is argued that no effective step was taken in the case to serve the petitioner with warrants before issuance of proclamation against him. It has been further iterated that the impugned order has been passed based on fabricated and false reports. It is respectfully submitted by the learned counsel that the petitioner was neither personally served with any notice nor was any process ever properly executed or communicated to him. Learned counsel asserts that the impugned order has been passed without properly scrutinizing or verifying the authenticity of the report submitted by the process server. Consequently, the order declaring the petitioner as a proclaimed offender is unsustainable in the eyes of law and deserves to be set-aside.

3. Learned State counsel has opposed the claim of the petitioner seeking quashing of the order declaring the petitioner as proclaimed offender in the case. While refuting the case of the petitioner, detailed arguments concerning the merits of the case were made and it is argued that the offence alleged against the petitioner is serious and heinous. According to learned State counsel, the Police has conducted fair and proper investigation and after completion of the same, final report will be presented by the Police shortly. Moreover, it has been stated that the learned Court below followed the procedure as laid-down under Section 82 of the Cr.P.C., 1973 in letter



and spirit and no discrepancy whatsoever is forthcoming from the records of the case.

4. I have heard the learned counsel for the rival parties and carefully perused the record of the case.

5. The facts of the present case narrate a very sordid course of procedure, adopted by the trial Court. Perusal of the statement of the concerned Police official (Annexure P-6) executing the non-bailable warrants, shows that the non-bailable warrants issued against the petitioner remained unserved. As such, the Judicial Magistrate noted that the non-bailable warrants issued against the petitioner remained unserved with the report that the accused was not found at home. As is apparent from the bare perusal of the impugned order dated 02.01.2019 (Annexure P-5), the learned Judicial Magistrate, on the basis of the report forwarded by the serving official, observed that the service on the present petitioner has been effected and consequent to the petitioner's non-appearance on the concerned date recorded a satisfaction to the effect that the petitioner is absconding. Accordingly, the petitioner was declared proclaimed offender.

6. I find the course adopted by the Judicial Magistrate, as antithesis to the provisions of Section 82 of the Code of Criminal Procedure, 1973. The learned Judicial Magistrate has committed gross illegality by issuing the said proclamation under Section 82 of the Criminal Procedure Code, 1973, without complying the mandatory requirements of law. Hence, the same is not sustainable in law and continuation of the same will amount to abuse of process of law. Section 82 of the Criminal Procedure Code, 1973 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;

(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 Sections 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 sub-section (1).]”

7. A coordinate Bench of this Court while dealing with invocation of the provision of Section 82 of the Code of Criminal Procedure, against an accused in the case of **‘Sonu v. State of Haryana, 2021(1) RCR (Criminal)**



“9. The essential requirements of section 82 of the Cr.P.C., 1973 for issuance and publication of proclamation against an absconder and declaring him as proclaimed person/offender 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. (See Rohit Kumar v. State of Delhi: 2008 CrI. J. 2561).

(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., 1973. (See Rohit Kumar v. State of Delhi : 2008 CrI. J. 2561).

(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. (See Bishundayal Mahton and others v. Emperor : AIR 1943 Patna 366 and Devender Singh Negi v. State of U.P. : 1994 CrI LJ (Allahabad HC) 1783).

(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. (See Gurappa Gugal and others v. State of Mysore : 1969 CriLJ 826 and Shokat Ali v. State of Haryana : 2020(2) RCR (CRIMINAL) 339).

(v) Where the period between issuance and publication of the proclamation and the specified date of hearing is less than thirty days, the accused cannot be declared a proclaimed person/offender and the proclamation has to be issued and published again. (See Dilbagh Singh v. State of Punjab (P&H) : 2015 (8) RCR (CRIMINAL) 166 and Ashok Kumar v. State of Haryana and another : 2013 (4) RCR (CRIMINAL) 550)

(vi) The Proclamation has to be published in the manner laid down in section 82(2) of the Cr.P.C., 1973. 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., 1973 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. (See Pawan Kumar Gupta v. The State of W.B. : 1973 CriLJ 1368). 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. (See Birad Dan v. State: 1958 CriLJ 965).

(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., 1973. Such statement in writing by the Court is declared to be conclusive evidence that the requirements of Section 82 have been complied with and that the proclamation was published on such day. (See Birad Dan v. State: 1958 CriLJ 965).

(xi) The conditions specified in section 82(2) of the Cr.P.C., 1973 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. (See Devendra Singh Negi alias Debu v. State of U.P. and another: 1994 CriLJ 1783 and Pal Singh v. The State: 1955 CriLJ 318)."

8. In view of the provisions of above quoted Section 82 of the Code of Criminal Procedure and the authoritative judgment interpreting the applicability of the provisions of Section 82 of the Code of Criminal Procedure, the issuance of proclamation in the present case is clearly not sustainable. The provisions of Section 82 of Cr.P.C. do not in any manner



prescribe that the proclamation against the accused can be issued just to speed up the trial, as has been done by the Judicial Magistrate, in the facts of the present case. Furthermore, it is totally inexplicable that how the issuance of such a proclamation will serve the interest of justice. Proceedings in a criminal trial cannot be construed and pursued just with an endeavour to rush up the same, under the garb of interest of justice. Interest of justice would be better served if the procedure adopted is supporting the cause of prosecution as well as accused, both in equal manner. The prospect of one party cannot be prejudiced to serve the purpose of other. The concept of fair trial entails into itself equal opportunity to both the prosecution as well as the accused to participate in the court proceedings.

9. It is pertinent to mention that by now it is a settled principle of law that the Court which issues the proclamation under Section 82 of Cr.P.C., must record its satisfaction that the accused in respect of whom the proclamation is being made, is absconding or concealing himself to evade his arrest. The predominant requirement for invocation of provisions of Section 82 of the Code of Criminal Procedure is clearly lacking in the present case. Perusal of order dated 02.01.2019 passed by the Judicial Magistrate shows that no satisfaction has been recorded while issuing the proclamation that the accused-petitioner has absconded or is concealing himself so that warrants of arrest against him cannot be executed. There was no material present before the Judicial Magistrate to record such a satisfaction. Rather, the case put forth by the petitioner before this Court, that he has never resided at the address given by the police in the case,



clearly shows that he was never served with any warrants before issuance of proclamation against him.

10. Strangely the impugned order dated 02.01.2019 passed by the Judicial Magistrate, declaring the petitioner as proclaimed offender has relied upon statement of serving official to hold that the proclamation issued against the petitioner has been effected. The report annexed as Annexure P-6 to the petition shows that in this report it is mentioned that the police official went to serve the arrest warrant issued against the petitioner at his given address in the case but he was not found there. He had pasted one copy of notice on the main gate of the residence of the accused and one copy of notice on the public place. Furthermore, it has been stated in the said report that there are no chances of availability of the accused on the said address in future also. But the Judicial Magistrate while passing the impugned order declaring the petitioner as proclaimed offender in the case has been totally oblivious of said service report of warrants by the police. As was enunciated in para 9 (vi) of the judgment in the case of **Sonu** (supra), the proclamation has to be published in the manner laid down in section 82(2) of the Cr.P.C., 1973. 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. In view of the fact that the address so given by the prosecution on the case file, was wrong and the accused never resided at the address so given, it can



be safely held that the condition so enumerate in para 9(vi) of *Sonu (supra)*, was not complied with and the impugned order is liable to be set aside on this score alone.

11. The provisions of Section 82 of the Code of Criminal Procedure having serious ramifications qua the right of the accused concerning his presence in the criminal trial proceedings ought not be and cannot be invoked in casual and cavalier manner. The requirement of recording of satisfaction, that the accused has absconded or is concealing himself so that warrant of his arrest cannot be executed, as embodied in Section 82 of the Code of Criminal Procedure, is to be scrupulously complied with based on relevant material available on record of the case in that regard. Non-adherence to said requirement while declaring the accused as proclaimed offender vitiates the proclamation proceedings initiated against the accused.

11.1. Furthermore, vide order of even date i.e. 26.11.2024, the FIR in question already stands quashed in *CRM-M-32691-2019*. Thus, no useful purpose would be served by keeping the criminal proceedings pending against the petitioner. Besides, the parties have already entered into an amicable settlement and the FIR itself stands quashed in view of compromise having been arrived at between the parties, thus, it would be an appropriate case for exercise of powers under Section 482 of Cr.P.C. and to bring to an end the criminal proceedings initiated in the light of the FIR *ibid* against the petitioner.

12. In view of the above findings, in the entirety of facts and circumstances of the present case, the present petition is allowed and the order dated 02.01.2019 (Annexure P-5) passed by the Judicial Magistrate, 1st



Class, Hoshiarpur in FIR No.64 dated 30.05.2018 (impugned FIR) registered under Sections 363 and 366 of Indian Penal Code, 1860 at Police Station Bullowal, District Hoshiarpur, declaring the petitioner as proclaimed offender is quashed.

13. Pending application(s), if any, shall also stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

November 26, 2024
Ajay

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