

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

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CRM-M-18632-2024 (O&M)
Date of decision: 18.04.2024

Puneet Sharma ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of order dated 16.03.2023 (Annexure P-1), passed by the Chief Judicial Magistrate, Rewari in case titled as *State vs. Punit*, arising out of FIR No. 263 dated 14.08.2018, registered under Sections 498-A, 323, 406, 34 of IPC at Police Station Rewari City, District Rewari, whereby the petitioner had been declared a proclaimed person as well as for quashing of order dated 19.03.2024, passed by the learned Additional Sessions Judge, Rewari, whereby the revision, filed by the petitioner against the order dated 16.03.2023, had been dismissed.
2. The aforementioned FIR was registered on the basis of a written complaint filed by complainant-Dimple on 14.08.2018 alleging therein that her marriage was performed with petitioner Puneet Sharma on 27.11.2015. Her father had spent a huge amount on her marriage. Several articles were given to her in-laws at the time of her marriage as well as on the occasion of

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God Bharai ritual. However, when after marriage, she went to her matrimonial home, the petitioner and his family members started taunting her by saying that her father had not given sufficient dowry and the demand of a Honda City car and an amount of Rs. 5 Lakhs was raised by them. She alleged that her husband and his family members started harassing her on account of demand of dowry and she was even extended beatings by her in-laws. She further alleged different occasions when she was subjected to cruelty and harassment by the accused persons on account of demand of dowry. Ultimately, she was thrown out of her matrimonial home. Even her *istridhan* was criminally misappropriated by the accused persons. She prayed for taking action against the culprits. After registration of the FIR, investigation proceedings were initiated and after completion of the same, the challan was presented in Court. However, since the presence of the petitioner could not be secured as he could not be apprehended, proceedings under Section 82 Cr.P.C. were initiated against him and he was declared a proclaimed person, vide impugned order dated 16.03.2023. The petitioner had filed a revision before the Court of learned Additional Sessions Judge, Rewari challenging the order dated 16.03.2023 but the same had been dismissed, vide impugned order dated 19.03.2024.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the petitioner has been falsely implicated in this case. He was working in a company situated at Gurugram and even happened to go abroad some times. However, while declaring him a proclaimed person, the proper procedure as laid down under Section 82 Cr.P.C. had not been followed as he was never served with the

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summons/warrants issued by the trial Court at his ordinary place of residence and he had been declared a proclaimed person without following the proper procedure prescribed under Section 82 Cr.P.C. With these broad submissions, learned counsel for the petitioner has argued that the impugned order is liable to be set aside. It is also argued that even the order dated 19.03.2024, passed by the revisional Court, is not sustainable in the eyes of law as the same had been passed ignoring the fact that the trial Court, while declaring the petitioner as a proclaimed person, had not followed the proper procedure as prescribed in law. With these broad submissions, it is urged that the impugned orders are liable to be set aside.

4. Learned State counsel, who has advance notice of the petition, has argued that the petitioner was having knowledge about the pendency of the trial and had intentionally avoided his appearance before the trial Court, therefore, he was rightly declared a proclaimed person. Hence, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties and have also gone through the material placed on record.

6. On giving due deliberations to the contentions as raised by learned counsel for the parties and on an 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 16.03.2023 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;

(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

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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 CrL 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.

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(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 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

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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 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 and on a perusal of the copies of the zimini orders, which have been placed on record, it is apparent that due to non-appearance of the petitioner before the trial Court despite issuance of several non-bailable warrants, the trial Court ultimately on 23.12.2022 had ordered publication of proclamation for 14.02.2023 with a note that the petitioner had to appear before the Court on 16.03.2023. However, a perusal of the letter written by the Investigating Officer on 08.05.2019 to the trial

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Court shows that the Court was informed that the petitioner had been residing in Gurugram. Even some of the co-villagers of the petitioner had given report to the Investigating Officer that the petitioner had not been residing in his village in Rewari since long but these facts had been ignored by the trial Court while ordering for publication of proclamation on 23.12.2022 as it had not recorded its proper satisfaction that the petitioner had absconded or was concealing himself so that the warrant of arrest, previously issued, could not be executed, despite reasonable diligence. More so, when it was in the due knowledge of trial Court that the petitioner was residing in Gurugram, it was incumbent upon it to serve him in Gurugram by adopting the procedure as prescribed in law. Hence, this was in clear violation of the provisions of Section 82 of Cr.P.C. Reliance in this regard can be placed upon ***Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561, Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366 and Devender Singh Negi Vs. State of U.P. : 1994 CrL LJ (Allahabad HC) 1783.***

11. Further, a perusal of the report of the executing police official shows that the proclamation was not read in some conspicuous place of the village of the petitioner, which was in violation of the provisions of Section 82(2) Cr.P.C., which prescribes that 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.

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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. Reliance in this regard can be placed upon ***Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368***. Further, a perusal of the impugned order dated 19.03.2024, passed by the revisional Court, shows that it had dismissed the revision of the petitioner, challenging the order dated 16.03.2023 passed by the trial Court, without noticing the aforesaid errors committed by the trial Court.

12. Accordingly, in view of the discussion as made above, the present petition is allowed and the impugned order dated 16.03.2023 (Annexure P-1), passed by the Chief Judicial Magistrate, Rewari in case titled as ***State vs. Punit***, arising out of FIR No. 263 dated 14.08.2018, registered under Sections 498-A, 323, 406, 34 of IPC at Police Station Rewari City, District Rewari, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom. As a consequence, the impugned order dated 19.03.2024 (Annexure P-2), passed by the revisional Court, also stands quashed.

13. 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.

14. 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.
15. Till the appearance of the petitioner before the trial Court, his arrest shall remain stayed.

18.04.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes