

CRM-M-19178-2024 &
CRM-M-43657-2024

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206 (2 and 3)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19178-2024

Date of Decision :25.11.2024

PARDEEP

.....Petitioner(s)

VERSUS

STATE OF HARYANA AND ANOTHER

.....Respondent(s)

CRM-M-43657-2024

MANJEET

.....Petitioner(s)

VERSUS

STATE OF HARYANA AND ANOTHER

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Madhur Jangra. Advocate with
Ms. Manita Dalla, Advocate and
Ms. Aanchal Rani, Advocate,
for the petitioner.

Mr. Abhinash Jain, DAG, Haryana.

Mr. S.S.Momi, Advocate,
for respondent no.2.

KULDEEP TIWARI, J.(Oral)

1. Both the petitions are amenable to be decided together as a common impugned order dated 16.01.2024 (Annexure P-6), passed in a private complaint case bearing no.COMI-113 of 2018, dated 26.10.2018, under Sections 147, 149, 302 and 34 IPC, and under Section



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27 of the Arms Act, has been challenged, wherethrough, the present petitions have been declared proclaimed offenders, and seeks quashing thereof.

2. The present petitioners also seek quashing of the FIR No.43, dated 07.03.2024, under Section 174-A of the IPC, which has been registered at Police Station Badhra, District Charkhi Dadri, in pursuance to the impugned order (*supra*)

3. Learned counsel for the petitioner, in asking for the relief (*supra*) submits that the petitioner was in fact earlier a complainant in the present incident, and an FIR was registered at his behest, and thereupon, a private complaint was filed by the present complainant-Darshana Devi, w/o deceased Sombir, wherein, the petitioner was also arrayed as an accused. Consequently, the learned trial Court concerned, vide order dated 14.06.2023 (Annexure P-3), summoned the present petitioner along with other co-accused in the present complaint.

4. Learned counsel for the petitioner further submits that the petitioner was never summoned at his original place of residence. Learned counsel for the petitioner also draws attention of this Court towards the statement of the process server concerned, which is reproduced hereinafter, and wherethrough he attempted to execute the warrants concerned:-

“I went to the address of accused Pardeep S/o Jageram R/o Jagrambas District Charkhi Dadri and inquired about accused Pardeep S/o Jageram, accused was not found present at home, proclamation was made through the advertisement, a copy of advertisement was pasted on the wall outside the house of accused,



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second copy was pasted on public place, third copy was pasted on notice board outside the court premises on 10/12/2023, fourth copy produced in the Hon'ble Court.”

5. He over-and-above submits that no efforts made by the executing Constable to serve the summons, rather only for the purpose of formality a copy of such publication was affixed outside the house of the accused.

6. This Court has examined the impugned order (*supra*), as all as other zimni orders passed by the learned trial court concerned.

7. Vide order dated 23.11.2023 (Annexure P-4 Colly.), the learned trial court concerned after recording the satisfaction that the petitioners are absconding and concealing themselves proceeded to initiate the proclamation proceeding, and vide order (*supra*) passed directions for issuance of proclamation against the petitioners and other co-accused for 16.01.2024. The relevant extract of the order dated 23.11.2023, reads as under:-

“Issued non bailable warrant of arrest of accused persons Kamal Singh, Pardeep and Manjeet received back unexecuted.

Perusal of case file shows that despite issuance of warrants, the presence of said accused persons could not be procured. It appears that the accused are either absconding or concealing themselves.

In these circumstances, let, the presence of accused Kamal Singh, Pardeep and Manjeet be procured by way of publication of proclamation. The proclamation shall be effected in strict of compliance of Section 82 of Cr.P.C. Now, the proclamation against the accused Kamal Singh, Pardeep and Manjeet be issued for 16.01.2024.

Complainant, through his counsel, is directed to file the list of property of aforesaid accused persons on next date of hearing.”

8. Thereupon, the learned trial court concerned, while passing the impugned order (*supra*), declared the present petitioners as



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proclaimed persons and also directed the complainant to intimate about the property registered, if any, in the name of the proclaimed persons, so as to initiate proceedings under Section 83 of the Cr.P.C.

9. While declaring the petitioners as proclaimed persons vide impugned order, the learned trial court concerned made the following observation:-

“As per report of serving constable, the proclamation was publically read; a copy of the proclamation was affixed at the house of accused and another copy at the Court house.”

10. The hereinabove, extracted observation, is infact, factually incorrect, as the statement of the serving constable, makes no voice regarding reading of proclamation publically. Therefore, there is no meticulous compliance of provisions of Section 82(i)(a) of the Cr.P.C. Further, the essential mandate of Section 82 Cr.P.C. infact has not been complied with.

11. Therefore, the instant impugned order requires interference by this Court. This Court lend vigor from a judgment passed by a co-ordinate bench in “**Vipan Kumar vs. Punjab State Power Corporation Ltd.**” (CRM-M-3361-2022, decided on 22.02.2022). The relevant extract thereof reads as under:-

“6. However, on a deepest reading of the mandate carried in subsection 2, it is apparent that all the provisions carried therein are to be conjunctively complied with or in other words, there is no scope therein, for the serving official, to rather making fragmentary compliances thereto nor the serving official can omit to mete compliance with the mandate carried in (i)(a) of sub-section 2 of Section 82 inasmuch as, his omitting to read the publication in some conspicuous place of the town, wherein, the accused person ordinarily resides. However, the report of the serving official is silent, with respect to his meteing compliance qua the afore mandate carried in (i)(a) of sub-section 2 of Section 82 of the Cr.P.C. Significantly the pasting of the

- proclamation notice at a public place is not co-equivalent to the serving official meteing compliance qua the statutory requirement, inasmuch as, his reading the public proclamation notice at a conspicuous public place. Therefore, since as afore stated, he was rather enjoined to mete compliance with all the provisions carried in sub-section 2, and, was not to mete compliances only qua a part of the provisions carried therein. Consequently, his report is legally infirm, and, also the reliance, as made thereons, by the learned Magistrate concerned, is not amenable for acceptance.”
12. In view of the above, the impugned order (*supra*) does not stand before the legal scrutiny of this Court, therefore, the same is hereby **set aside**. Consequently, the instant petitions are, **allowed**.
13. Resultantly, FIR No.43, dated 07.03.2024, under Section174-A of the IPC, registered at Police Station Badhra, District Charkhi Dadri, and all the subsequent proceedings arising therefrom, are, also hereby, **quashed** *qua* the present petitioners.
14. All pending application(s), if any, also stand **disposed** of accordingly.
15. A photocopy of this order be placed on the file of the connected case.

November 25, 2024

dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No