

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

281-2

CRM-M-48020-2017 (O&M)
Date of decision: 25.01.2024

Amandeep Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sartej Singh Narula, Advocate
for the petitioner.

Mr. P. S. Pandher, AAG, Punjab.

Mr. H. S. Deol, Advocate
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of order dated 20.11.2017 (Annexure P-15), passed by the Judicial Magistrate First Class, Jalandhar in case arising out of FIR No. 156 dated 26.11.2016, registered under Section 498-A IPC at Police Station Women, Police Commissionerate Jalandhar, whereby he had been declared a proclaimed person.
2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on a written complaint filed by complainant Arshleen Kaur alleging therein that her

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marriage was solemnized with the petitioner on 14.11.2015, who was a permanent resident of Canada. Huge amount of money was spent on the marriage. Sufficient dowry in the form of cash and other articles was given in the marriage. However, the complainant was subjected to cruelty on account of demand of dowry on different occasions by the petitioner and his family members. A case under Section 498-A IPC was registered and the investigation proceedings were initiated. After completion of investigation, challan was presented in Court on 20.03.2017. However, since the presence of the petitioner could not be secured, proceedings under Section 82 Cr.P.C. were initiated against him and he was declared a proclaimed person, vide impugned order dated 20.11.2017.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that proper procedure as laid down in Section 82 Cr.P.C. had not been followed by the trial Court while declaring the petitioner a proclaimed person. The petitioner was abroad at the relevant time and no efforts were made by the trial Court to serve him at his ordinary place of residence in Canada. It is further submitted that other accused persons are facing trial and although the petitioner is ready to join the proceedings before the trial Court but now a compromise has been arrived at between the parties and a petition, bearing **CRM-M-65309-2023**, has been filed before this Court seeking quashing of the FIR in question on the basis of the compromise, which is listed for 25.01.2024. With these broad submissions, learned counsel for the petitioner has argued that the impugned order, declaring the petitioner a proclaimed person, is liable to be set aside.

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4. Learned counsel for respondent No. 2/complainant has submitted that he has instructions to say that a compromise has been arrived at between the parties and respondent No. 2 has no objection if the order, declaring the petitioner as a proclaimed person, is set aside.

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

6. I have heard learned counsel for the parties at length and have also gone through the record.

7. 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 20.11.2017 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

8. Before delving on the aforementioned points, it would be relevant to firstly 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***

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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 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)."

9. 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

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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*.

10. 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.
- (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.

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(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 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.

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(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.

11. On applying the above discussed position of law to the peculiar facts and circumstances of the present case, it is noticed that on 20.03.2017, on presentation of challan, notice was issued to co-accused Jaswinder Singh for 24.03.2017 and it was observed by the trial Court that accused/petitioner had not come present. Thereafter, on 24.03.2017, the trial Court, by observing that both the accused persons were not present and non-bailable warrants issued against the petitioner were received back unexecuted, recorded its satisfaction that the accused was intentionally and willfully avoiding the service and ordered for issuance of proclamation for 07.06.2017. On 07.06.2017, since the proclamation issued against the petitioner was not received back, it was again ordered to be issued for 25.07.2017. Even on 25.07.2017, the situation remained same and fresh proclamation was issued for 25.08.2017. Even on 25.08.2017, since the proclamation issued against the petitioner was not received back, notice was issued to serving official for

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16.09.2017 but no fresh proclamation was ordered to be issued. On 16.09.2017, though the trial Court had not ordered for issuance of any fresh proclamation on the previous date but it observed that the proclamation issued to the petitioner had been received back duly executed and since the period of 30 days had not elapsed, the case was adjourned to 16.10.2017. However, the trial Court had failed to consider the fact that it could not extend the time by simply adjourning the case for awaiting the appearance of the petitioner and was mandatorily required to issue proclamation again for publication thereon in accordance with provisions of Section 82(1) Cr.P.C. Reliance in this regard can be placed upon *Dilbagh Singh's* case (supra) and *Ashok Kumar's* case (supra). Since in the meanwhile, the petitioner had filed a petition before this Court seeking quashing of the FIR, the trial Court on 16.10.2017 adjourned the case to 20.11.2017 for awaiting the outcome of the said petition. On 20.11.2017, noticing the fact that no stay has been granted by this Court in the quashing petition filed by the petitioner, he was declared a proclaimed offender by passing the impugned order. A perusal of the record nowhere shows that before passing the impugned order, declaring the petitioner a proclaimed person, the trial Court had recorded its satisfaction to the effect that the petitioner had been duly served with a notice/warrant or it was satisfied that he had absconded or was concealing himself so that such warrant could not be executed or the same could not be issued despite due diligence. It is also revealed that no attempt was made to serve the petitioner at his ordinary place of residence at Canada through Ministry of External Affairs as it is admitted case that the petitioner was a permanent resident of Canada. The Courts are required to ensure that personal service of summons are affected

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upon accused before issuance of non-bailable warrants and in case the accused is residing abroad then a valid personal service has to be effected through embassy of India located at concerned foreign country. Reliance in this context can be placed upon ***Jagjit Singh and others vs. State of Punjab : 2022 (4) RCR (Criminal) 241***. Therefore, the satisfaction, as recorded by the trial Court that the presence of the petitioner could not be secured easily, appears to be recorded without applying mind. More so, the trial Court failed to consider the fact that it could not extend the time by simply adjourning the case for awaiting the appearance of the petitioner and was mandatorily required to issue proclamation again for publication thereon in accordance with provisions of Section 82(2) Cr.P.C. It follows that the petitioner was wrongly declared a proclaimed offender in breach of the prescribed procedure. This Court can also not lose sight of the fact that the matter stands amicably settled between the parties and the petitioner and other accused have filed a petition before this Court seeking quashing of FIR on the basis of the compromise. Therefore, the impugned order dated 20.11.2017 suffers from material illegalities and is liable to be quashed.

12. Accordingly, the present petition is allowed and the impugned order dated 20.11.2017 (Annexure P-15), passed by the Judicial Magistrate First Class, Jalandhar in case arising out of FIR No. 156 dated 26.11.2016, registered under Section 498-A IPC at Police Station Women, Police Commissionerate Jalandhar, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

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.

25.01.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes