

CRM-M-24269-2024
DECIDED ON: 15.05.2024

VERSUS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Amritpal Singh Gill, Advocate for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

The jurisdiction of this Court has been invoked under Section 482 Cr.P.C. for quashing of order dated 15.07.2022 (Annexure P-6) passed by learned Additional Sessions Judge, Fast Track Special Court, Ludhiana, whereby the petitioner was illegally declared as proclaimed offender in case FIR No.447, dated 23.10.2017 under Sections 379-B, 323, 148, 149 of the IPC, 1860, registered at Police Station Basti Jodhewal, District Police Commissionerate, Ludhiana.

Learned counsel for the petitioner contends that the Additional Sessions Judge Fast Track Special Court, Ludhiana vide order dated 17.05.2022 observed that the proclamation issued against the present petitioner-Lovejot Singh has not been received back and a fresh proclamation was issued against him under Section 82 Cr.P.C. for 07.06.2022. On the date fixed i.e. 07.06.2022, the proclamation issued against the present petitioner has been received back duly effected and the serving constable be summoned for 15.07.2022 for recording his statement regarding proclamation.

The aforesaid assertion which is supported by the orders passed by trial Court dated 17.05.2022 and 07.06.2022, copy of which have been produced by counsel for the petitioner today in Court, which is taken on record though were not earlier attached with the petition.

It is on the strength of these very facts, the order dated 15.07.2022 (Annexure P-6) has been assailed before this Court, which is clearly violative of Section 82 Cr.P.C. whereby statutory period of 30 days has not been calculated and that the notice of 30 days has not been served if the date of issuance of proclamation is taken to be 17.05.2022 which was actually issued on 18.05.2022 with the date for appearance fixed as 07.06.2022. The period from 17.05.2022 till 07.06.2022 is only 21 days and short by 7 days which vitiated the proceedings under Section 82 Cr.P.C. in the instant petition.

Another aspect coming forth on perusal of the order dated 15.07.2022 that the statement of HC Ranjit Singh has been recorded, who served the proclamation, to the effect that no such person was available at the given address and he simply pasted the proclamation notice on the wall of the said address though there is no assertion by him to the effect that whether the petitioner-accused is actually living at the given address and the proclamation made thereupon.

Notice of motion.

On the asking of the Court, Mr. Rajiv Verma, DAG, Punjab accepts notice on behalf of the respondent-State and submits that the petitioner does not deserve any concession in the instant petition since he is declared as proclaimed offender in the instant FIR.

Having gone through the submissions made by respective parties and record available before this Court, Section 82 Cr.P.C. would read as under, which needs to be looked at:-

“(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 specific 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 home-stead 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 Sub-Section (1).”

The argument raised by the petitioner carries weight wherein only 21 days time has been given for appearance which is to be taken into account and not the date fixed for hearing in the proclamation notice which was actually issued on 18.05.2022 with the date of appearance by production warrants fixed as 07.06.2022 i.e. 9 days less than the statutory period of 30 days. Hence, in the light of above, order dated 15.07.2022 is hereby quashed qua the petitioner.

In case, any application for bail is preferred by the petitioner, the same shall be considered and decided by the trial Court expeditiously preferably within a period of one week from the date of receipt of the said application in accordance with law.

The present petition is disposed off in the aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

15.05.2024
Poonam Negi

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>