



274

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-26161-2024

Date of Decision:29.08.2024

Amandeep Singh

...Petitioner

Vs.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Ms. Shifa Arora, Advocate
for the petitioner.

Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to quash the impugned order dated 07.04.2022 (Annexure P-7) passed by the Court of Sub Divisional Judicial Magistrate, Sunam, whereby the present petitioner has been declared a proclaimed person in a case FIR No.229 dated 15.10.2019, registered under Section 420 of IPC, Police Station City Sunam, District Sangrur (Annexure P-1).

2. Learned counsel for the petitioner contends that the petitioner was falsely involved in the FIR captioned above. She further contends that the petitioner had applied for grant of concession of anticipatory bail before the Court of Sessions Judge, Sangrur, however, the said prayer was declined. His counsel never communicated the said fact to the petitioner. She further contends that since the petitioner could not appear before the Court, vide order dated 23.08.2021, the Court of SDJM, Sunam ordered that the petitioner may be served through the proclamation and the serving Agency was directed to



procure the proclamation for 24.09.2021. On 24.09.2021, the proclamation against the petitioner could not be issued and it was ordered to be issued for 15.01.2022. On 17.01.2022, the statement of serving official i.e. Lakhwinder Singh was recorded and he stated that he had published the proclamation against the petitioner on 16.01.2022 i.e. one day prior to the date fixed before the Court i.e. 17.01.2022. Since on 17.01.2022, the period of 30 days after affecting the proclamation had not elapsed, the Court of SDJM, Sunam adjourn the case to 07.04.2022 (Annexure P-6). On 07.04.2022, the petitioner was ordered to be declared as “proclaimed person” vide the impugned order dated 07.04.2022 (Annexure P-7). Learned counsel further submitted that the adjournment to 07.04.2022 by the Trial Court would not cure the defect of not having afforded the period of less than 30 days for appearance after proclamation. Section 82 Cr.P.C specifically provides that a period of 30 days after publication has to be provided and the said principle has been reiterated in the judgment of **Ashok Kumar Vs. State of Haryana 2013 (4) RCR(Crl.)550.**

3. On the other hand, learned State counsel had vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner had intentionally not appeared before the Trial Court for several months and is not entitled for any relief. It was submitted that the petitioner had the knowledge of pendency of the proceedings against him, however, he chose not to appear before the Trial Court and the petition is liable to be dismissed. However, learned State counsel could not rebut the factual submissions made by learned counsel for the petitioner in the present case.

4. It has been held by this Court in the matter of **Ashok Kumar Vs. State of Haryana and Anr. 2013(4) RCR (Criminal) 550 as under:**



3.“As per order dated 04.01.2013 passed by the learned Additional Chief Judicial Magistrate, Panipat the case has been adjourned for 06.03.2013 for issuing of proclamation under Sections 82 and 83 Cr.P.C.against petitioner Ashok Kumar. The order dated 06.03.2013, shows that proclamation issued against Ashok Kumar received back duly executed. Statement of Serving Constable was also recorded. Period of 30 days had not elapsed from the date of publication. Therefore, the case was adjourned to 13.3.2013. On that day, the petitioner was declared as proclaimed offender. The original record also shows that the statement of the serving official, namely, ASI Dilbag Singh was recorded on 6.3.2013, who stated that on 9.2.2013, he visited the place of residence of the accused along with proclamation. After reading publicly, the proclamation was affixed at conspicuous part of the house of the accused where he ordinarily resides. A copy of the proclamation was also affixed at conspicuous part of the Court house, which means that the publication was effected on 9.2.2013 for 6.3.2013, which shows that after the publication of the notice, the accused was not given the mandatory period of 30 days to appear before the Court. The mere fact that the Court adjourned it after the period of 30 days will not be treated as compliance of the provisions of Section 82 (1) Cr.P.C. where it is provided that :-

“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.

(1) XX XX XX XX XX XX XX



(2) XX XX XX XX XX XX XX

4. *“In view of the above provisions of Section 82(1) Cr.P.C., it is clear that the publication was effected on 9.2.2013 and the accused was directed to appear in the Court as per that publication on 6.3.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned order on 13.3.2013, the publication has been effected as per the provisions of Section 82 Cr.P.C. There was no order in the publication for the accused giving specified time and place to appear on 13.3.2013. Therefore, this order is not as per law and the same is set aside”.*

5. Still further, it has been held by this Court in the matter of **Avtar Singh Vs. State of Punjab and Anr. in CRM-M-1866-2017** which is as under:-

“The above quoted provision is clear that through the proclamation made prior to declaration of a person as a proclaimed offender, he should be given not less than thirty days from the date of its proclamation to appear at a specified place and a specified time.

In the case in hand, thirty days were not given to the petitioner to appear before the Trial Court as the proclamation was made on 13.05.2011 requiring him to appear before the Trial Court on 14.05.2011. Thus, the proclamation and the subsequent order dated 03.09.2011 (Annexure P-2) declaring the petitioner to be a proclaimed offender do not confirm with the mandate of Section 82 (1) of the Code.

6. In the present case also, keeping in view the law laid down by this Court in the matter of **Ashok Kumar and Avtar Singh (supra)**, it can be safely concluded that the Trial Court had not complied with the mandatory provisions of Section 82 of Cr.P.C., while declaring the petitioner as proclaimed person.

7. Consequently, the present petition is allowed and the impugned



order is illegal and unsustainable and is liable to be quashed by this Court.

8. The petitioner has already appeared before the Trial Court in compliance of interim order dated 23.05.2024 passed by this Court and he shall continue to appear before the Trial Court on each and every date of hearing. He shall file an affidavit before the Trial Court that he shall not absent himself from the Trial Court proceedings, without prior permission of the Trial court.

29.08.2024
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(N.S.SHEKHAWAT)
JUDGE

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