



119/2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27714-2023 (O&M)
Date of Reserve:12.08.2024
Date of Decision:02.12.2024

Mugdha Sharad Palav @ Mugdha Tejas Sule @ Sharan Walia
...Petitioner
Vs.
State of Punjab
...Respondent

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

Present: Mr. Ruhani Chadha, Advocate
 for the petitioner.

 Mr. I.P.S Sabharwal, DAG, Punjab.

 Mr. Ranjan Lakhanpal, Advocate with
 Mr. Shubhakaran Singh Sandhu, Advocate
 for the respondents.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to quash the FIR No.136, dated 19.10.2022, registered under Section 174-A of IPC, Police Station Navi Baradari, District Jalandhar (Annexure P-1) and all subsequent proceedings arising therefrom.
2. Learned counsel for the petitioner contends that the respondent had filed a complaint (Annexure P-2) against the petitioner by levelling false and baseless allegations against her. Vide order dated 06.05.2022 (Annexure P-3), the petitioner was summoned under Sections 406, 420,494,506,120-B of IPC. At the time of passing the summoning order, the petitioner as well as the complainant were living in England, however, a wrong address was mentioned



in the complaint and the petitioner had never stayed at the said address. Even the respondent filed a false affidavit dated 11.07.2022 before the Court of Judicial Magistrate Ist Class, Jalandhar, whereby, he specifically stated that he did not know any other address of the petitioner except the address, which was mentioned in the complaint (Annexure P-2). He further contends that the complaint was listed before the Trial Court on 01.07.2022 and the summons issued to the petitioner were received back with the report “addressee left”. Thereafter, the complainant was directed to furnish the correct address of the petitioner within a period of 10 days and thereafter, fresh notice was to be issued for 11.07.2022. On 11.07.2022, the respondent filed a false affidavit that he did not know any other address of the petitioner/accused except the address mentioned in the complaint. Consequently, the proclamation was ordered to be issued against petitioner for 16.08.2022. On 16.08.2022, the publication fee was deposited and the proclamation was issued for 22.09.2022. On 22.09.2022, the case was taken up by the Trial Court and it was observed by the Trial Court that the statutory period of 30 days had not elapsed and the case was adjourned to 01.10.2022, awaiting the appearance of the petitioner/accused. On 01.10.2022, vide the impugned order (Annexure P-6), the Trial Court observed that the statutory period of 30 days after effecting the proclamation had been elapsed and since the petitioner had not appeared, she was declared as proclaimed offender in the present case. Learned counsel further submits that in fact, the mandatory provisions of Section 82 Cr.P.C., was not complied by the Trial Court. In fact, on 16.08.2022, the proclamation was issued for 22.09.2022. On 22.09.2022, the period of 30 days had not elapsed and the case was adjourned to 01.10.2022 only for the purpose of fulfilling the requirements of



30 days as provided under Section 82 Cr.P.C., and the petitioner was wrongly declared as proclaimed offender.

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. Thus, in view of the above, this Court has no hesitation to hold that the mandatory provisions of Section 82 of the Cr.P.C have not been complied by the Trial Court. As a consequence, the impugned order dated 01.10.2022 (Annexure P-6) passed by the Court of Judicial Magistrate Ist Class, Jalandhar as well as FIR No.136, dated 19.10.2022, registered under Section 174-A of IPC, Police Station Navi Baradari, District Jalandhar and all subsequent proceedings were patent abuse of the process of the Court.

7. Still further, from a reading of the above referred provisions of the Code, it is evident that all the persons, who are absconding or concealing themselves so that the warrants may not be executed, cannot be declared as proclaimed offender. Only where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under the offences mentioned in Section 82(4) Cr.P.C. and such person fails to appear at the specific place and time required by the proclamation, the Court may pronounce such person as proclaimed offender. However, if the proclamation is respecting the offence, other than the offences mentioned in Section 82(4) Cr.P.C., then such persons, who are absconding and concealing themselves to affect the



execution of warrants of arrest, could be declared as proclaimed persons. From a plain reading of the provisions of Section 82 of Cr.P.C., it is evident that there is a distinction between a proclaimed person and a proclaimed offender. The said distinction is further reinforced by the provisions of Section 174-A IPC. As per Section 174-A IPC, if a person is declared as “proclaimed person” then he shall be punished with imprisonment for a term, which may extend to three years and or fine or both and where a declaration has been made in sub-section 4 of Section 82 Cr.P.C. pronouncing him as a “proclaimed offender”, he shall be punished with the imprisonment for a term which may extend to seven years and shall also be liable to fine. Thus, from the scheme of Code itself, it is evident that the words “Proclaimed Person” and “Proclaimed Offender” have different meanings and different punishments have been provided under the statute for the said violation of law. Even similar observations have been made by this Court in the matter of Satinder Singh Vs. The State of U.T., Chandigarh and another, 2011(2) R.C.R. (Criminal) 89.

8. From the above referred discussion, it is evident that the Trial Court had wrongly declared the petitioner as proclaimed offender. In the present case, vide the summoning order dated 06.05.2022 (Annexure P-3), the petitioner was ordered to be summoned under Sections 406, 420, 494, 506, 120-B of IPC and in view of the Section 82(4) of Cr.P.C., the petitioner could not have been declared as a proclaimed offender in the aforesaid offences.

9. Thus, in view of the above discussion, the present petition is allowed and the impugned order dated 01.10.2022 (Annexure P-6) passed by the Court of Judicial Magistrate Ist Class, Jalandhar as well as FIR No.136, dated 19.10.2022, registered under Section 174-A of IPC, Police Station Navi



Baradari, District Jalandhar and all subsequent proceedings are hereby ordered to be quashed.

10. Pending application(s), if any, stand(s), disposed of, accordingly.

02.12.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

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