

2024.PHHC.125432



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

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**CRM M-27944 of 2024
Date of Decision: 04.09.2024**

Jarnail Singh ...Petitioner
Versus
State of Punjab and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. R.S. Dadwal, Advocate
for the petitioner.

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

Mr. Suraj Kaundal, Advocate
for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the order dated 19.04.2023 (Annexure P-5) passed by the Court of Ms. Jagminder Kaur, Judicial Magistrate 1st Class, Jagraon, whereby, the petitioner was declared as proclaimed offender in criminal case arising out of FIR No. 37 dated 21.02.2017 under Sections 336, 325, 506, 148 and 149 of IPC and Sections 27, 54 and 59 of the Arms Act, Police Station City Jagraon, District Ludhiana Rural.
2. Learned counsel for the petitioner contends that the petitioner is resident of Agwar Rahlan, Tehsil Jagraon, District

Ludhiana and at present residing at 356 Jillings Crescent NW Edmonton, AB, T6L, 6Y3, Canada. The respondent No. 2 lodged one FIR No. 37 dated 21.02.2017 under Sections 336, 325, 506, 148 and 149 of IPC and Sections 27, 54 and 59 of the Arms Act, Police Station City Jagraon (Annexure P-1). After the presentation of the challan, the petitioner was appearing before the trial court, however, in the year 2022, the petitioner left for Canada and was not able to return back to India. On his back, warrants were issued to procure the presence of the petitioner before the trial Court, however, the warrants could not be executed as the petitioner was residing abroad. Vide order dated 19.12.2022, the Court of Judicial Magistrate 1st Class observed that the accused, i.e., the petitioner was intentionally avoiding the process of law and the proclamation under Section 82 of Cr.P.C. was issued against him for 25.01.2023. On 25.01.2023, the proclamation issued against the petitioner was not received back and the fresh proclamation under Section 82 Cr.P.C. was again ordered to be issued for 29.03.2023. Learned counsel further contends that the petitioner was already living abroad and in view of the order dated 19.12.2022 and 25.01.2023, the notification under Section 82 Cr.P.C. was published/pasted at his village, where he was not residing. Ultimately, the statement of serving official was recorded by the Court on 05.02.2023 and he stated that he had pasted one copy of the publication on the door of the house of the petitioner and one copy

was pasted on the wall of the village Dharamshala (inn). He had further pasted one copy on the notice board of the Court and ultimately, vide the impugned order dated 09.04.2023, the petitioner was declared as proclaimed offender. Learned counsel for the petitioner submits that in the present case, the procedure prescribed under Section 82 Cr.P.C. has not been followed by the Court and the petitioner had been wrongly declared as a proclaimed offender. In fact, the petitioner was facing prosecution under Sections 336, 325, 506, 148 and 149 IPC and Section 27 of the Arms Act and it was illegal to declare him as a proclaimed offender under these provisions of law.

3. On the other hand, learned State counsel submitted that petitioner had intentionally not appeared before the trial Court and has been correctly declared as proclaimed offender by following the due process of law. Learned State counsel further submits that the impugned order passed by the trial Court was legal and valid, however, he could not dispute the fact that the main case has already been compromised between the parties.

4. I have considered the rival submissions made by learned counsel for the parties and perused the record.

5. Section 82 of Cr.P.C. reads as follows:-

“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.

(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.”

However, by way of Section 12 of Act No.25 of 2005, subsections (4) and (5) were also inserted in Section 82 Cr.P.C. w.e.f. 23.06.2006 vide notification No.S.O.923(E) dated 21.06.2006, which reads as under:

“[(4) Where a proclamation published under subsection (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).]”

6. All the provisions of Section 82 Cr.P.C. are mandatory in nature and have to be followed strictly. The law is well settled that non compliance of any clause of the above said provisions would vitiate the entire proceedings, which had been initiated under Section 82 Cr.P.C. In the present case also, from a perusal of the statement of the serving official (Annexure P-4/A), it is evident that the copy of the proclamation was pasted on the door of the house of the petitioner and one copy was pasted on the wall of the village Dharamshala (Inn). The third copy was also affixed on the notice board of the Court.

However, from the perusal of the said report, it appears that the proclamation was not read publicly in some conspicuous place of town or village in which the accused ordinarily resided. Thus, the mandatory requirement of Section 82(2)(i)(a) Cr.P.C. had not been complied with and the entire proceedings under Section 82 Cr.P.C. including the impugned order dated 19.04.2023 (Annexure P-5) stood vitiated. Still further in the present case, the petitioner has wrongly been declared as proclaimed offender for the offence under Sections 336, 325, 506, 148 and 149 IPC and Sections 27/54/59 of Arms Act.

7. The offences mentioned in Section 82(4) Criminal Procedure Code are of recurring nature. All the persons, who are absconding or concealing themselves to evade execution of warrants of arrest, could be proclaimed persons but they could be declared a "proclaimed offender" only under the provisions of the Indian Penal Code which are mentioned in Section 82(4) Criminal Procedure Code. There is stark distinction between a proclaimed person and a proclaimed offender and for that reason, there is a difference of punishment provided under Section 174-A Indian Penal Code as it provides imprisonment which may extend upto three years or with fine or with both regarding a person who has been proclaimed in terms of Section 82(1) Criminal Procedure Code and the imprisonment which may extend upto seven years and also with fine

in respect of a person who is declared a "proclaimed offender" under Section 82(4) Criminal Procedure Code.

8. In the present case, the petitioner was prosecuted for the offence punishable under Sections 336, 325, 506, 148 and 149 IPC and Sections 27/54/59 of Arms Act, which are not mentioned under Section 82(4) of Cr.P.C. Thus, I am of the considered opinion that the petitioner could not have been declared as proclaimed offender and at the worst be declared as proclaimed person. Even, the impugned order is liable to be set aside on this ground as well.

9. In view of the above discussion, the present petition is allowed and the impugned order dated 19.04.2023 (Annexure P-5) passed by the Judicial Magistrate 1st Class, Jagraon and all consequential proceedings are ordered to be quashed qua the petitioner only.

04.09.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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