

130

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.27324 of 2024

Date of decision : 28.5.2024

Neeraj Kumar @ Neeraj Verma

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Naveen Bawa, Advocate, for the petitioner

SANDEEP MOUDGIL, J (ORAL)

The petition has been filed under Section 482 Cr.P.C. praying quashing of the impugned order dated 6.11.2023, Annexure P-7, passed in FIR No.220 dated 10.6.2018 under Sections 420 and 120-B IPC and Section 13 of the Punjab Prevention of Human Smuggling Act, 2012, registered at Police Station Shimlapuri, District Ludhiana, whereby the petitioner was declared proclaimed person without complying with the mandatory provisions envisaged under Section 82 Cr.P.C

2. Learned counsel for the petitioner would submit that trial Court has failed to adhere to the statutory period of 30 days as envisaged under Section 82 Cr.P.C. Only 16 days notice has been given for appearance of the present petitioner as the proclamation notice was affixed at the given address of the petitioner on 18.9.2023, and the date of appearance was fixed 5.10.2023. He in addition to the aforesaid illegality referred to the impugned order, would submit that the parties otherwise have entered into



a compromise and settled the matter amicably vide compromise deed dated 16.5.2024, Annexure P-2, and in the light of the same, the proclamation proceedings initiated against the petitioner vide order dated 2.9.2023 would be a futile exercise and tantamounts to an abuse of process of law.

3. Notice of motion.

4. Mr. Vishnu Dutt, Advocate, appears on behalf of the complainant, though the petitioner has not implicated the complainant as respondent in the memo of parties. His power of attorney submitted to the Court today stands accepted.

5. Mr. Rajiv Verma, DAG, Punjab, accepts notice on behalf of the State.

6. The essential requirements of Section 82 of the Cr.P.C. for issuance and publication of proclamation against an absconder and declaring him as proclaimed person/offender 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. (See Rohit Kumar Vs. State of Delhi : 2008 CrI. J. 2561).

(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. (See Rohit Kumar Vs. State of Delhi : 2008 CrI. J. 2561).

(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. (See Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366 and Devender Singh Negi Vs. State of U.P. : 1994 Cri LJ (Allahabad HC) 1783).

(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. (See Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826 and Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339).

(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. (See Dilbagh Singh Vs. State of Punjab (P&H) : 2015 (8) R.C.R. (criminal) 166 and Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550).

(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. (See Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368). 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.

(vii) Statement of the serving officer has to be recorded by the Court as to the date and mode of publication of the proclamation. (See *Birad Dan Vs. State* : 1958 CriLJ 965). (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. (See *Birad Dan Vs. State* : 1958 CriLJ 965).

(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. (See *Devendra Singh Negi alias Debu Vs. State of U.P. and another* : 1994 CriLJ 1783 and *Pal Singh Vs. The State* : 1955 CriLJ 318).

7. This Court in CRM-M-15619-2021 titled as *Manpreet Singh vs. State of Punjab* decided on 08.04.2021, while relying upon the judgment of this Court in *Ashok Kumar Vs. State of Haryana and another, 2013 (4) RCR (Criminal) 550* has held that the proclamation has to be issued by giving mandatory period of 30 days from the date of publication of the proclamation till the next date of hearing of the case, in the present case, the same has not been done. For reference, para 4 of *Ashok Kumar's* case (*supra*) being relevant is reproduced hereunder:-



“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.”

8. Considering the aforesaid factual aspect as submitted by learned counsel for the petitioner, which is not controverted by learned counsel for the complainant, who categorically accept the factum of compromise dated 16.5.2024, Annexure P-2, and the fact that the petitioner was asked to appear before the trial Court on 5.10.2023, and the proclamation notice was allegedly affixed on 18.9.2023, meaning thereby, only 16 days time was passed, and the petitioner was declared proclaimed person by Judicial Magistrate Ist Class, Ludhiana.

9. Now the petitioner has given an undertaking to join the proceedings after surrendering to the law which would only facilitate the ponderance of Court proceedings and help in expediting the proceedings for final adjudication. This Court is of the considered view that in the light of circumstances discussed as above, the petitioner deserves to be given one opportunity to surrender and join the proceedings before the trial Court as undertaken by him, i.e., within a period of 2 weeks from today.

10. In the light of above discussions made hereinabove, this Court is duly convinced after having the submissions as well as perusal of the record that 30 days period has not been complied with by the trial Court,

and the order dated 6.11.2023 (Annexure P-7) is bad and not justifiable in the eyes of law. Hence, the same is ordered to be quashed.

11. It is further observed that in case any application for bail is moved by the petitioner, the same may be considered and decided by the Court in accordance with law on that very day itself.

12. However, it is made clear that in case the petitioner does not abide by the aforesaid undertaking, the respondent/State shall be at liberty to move an appropriate application for revival of the instant petition.

13. The petition in the aforesaid terms is allowed.

(SANDEEP MOUDGIL)
JUDGE

28.5.2024
Ashwani

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