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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM M-28545-2023 (O&M)
Date of Decision:29.04.2024

Anita Devi ...Petitioner
Vs.
State of Punjab and another ...Respondents

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

Present: Mr. Kartik Gupta, Advocate, for the petitioner.
Mr. Jasjit Singh, DAG, Punjab.
Mr. Mitul Singh Rana, 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 impugned order dated 02.05.2023 (Annexure P-6) passed by the Judicial Magistrate 1st Class, Hoshiarpur in complaint case No.107 of 07.09.2021 (Annexure P-1) titled as “*Karan Singh Vs. Mrs. Anita Devi and another*”, under Sections 420, 406 and 506 of IPC whereby, the petitioner has been declared to be proclaimed person.
2. Learned counsel for the petitioner contends that the respondent No.2/complainant had filed the present complaint under Sections 406, 506 and 420 IPC against the present petitioner by

alleging that she alongwith her co-accused Ajay Kumar had dishonestly and intentionally withheld the dues and had failed to make the payment to respondent No. 2 in order to achieve their *malafide* and deceitful designs. Learned counsel further contends that after recording of the preliminary evidence, vide order dated 01.04.2022 (Annexure P-2), the petitioner and her co-accused were summoned by the trial Court to face the trial under Section 420 IPC. Thereafter, the summons, bailable warrants and non-bailable warrants were issued for the service of the present petitioner, however, the petitioner did not receive any intimation and the summons/warrants were received back by the Court unexecuted. In fact, the petitioner had no knowledge with regard to the pendency of the complaint against her and she had no reason to stay away from the Court proceedings. Learned counsel further contends that on 25.01.2023, the trial Court passed the following order:-

“Non-bailable warrants of arrest issued against the accused received back with the report of her son that the parents has gone to Hoshiarpur for their personal work and he says he will inform about the date of hearing to accused, but accused has not come present today in the court. Perusal of the file further shows that accused has been summoned through warrants earlier also. It seems that accused is deliberately avoiding the service and

intentionally not appearing in the present case. Accordingly, proclamation be issued against the accused Anita Devi for 09.03.2023.

Neither accused Ajay Kumar nor anyone on behalf of accused has come present. This court is of the opinion that accused Ajay Kumar is avoiding proceedings intentionally. Let notice to accused Ajay Kumar be issued for 09.03.2023”.

3. After that, on the following dates, i.e. 09.03.2023 and 31.03.2023, the following orders were passed by the trial Court:-

“Proclamation issued against the accused Anita Devi not received back. Let fresh proclamation be issued against the accused Anita Devi for 31.03.2023.

Notice issued Ajay Kumar not received back. Let fresh notice to accused Ajay Kumar be issued for 31.03.2023.

Notice to Tamili be also issued for the date fixed”.

and

“Proclamation issued against the accused Anita Devi received back duly effected, but did not turn up in the court. Statutory period of 30 days is not elapsed yet. Let presence of the accused Anita Devi be awaited till 02.05.2023.

Notice issued to accused Ajay Kumar received back served, but he did not turn up in the court. This court is satisfied that the accused Ajay Kumar is intentionally avoiding his appearance. Therefore, accused Ajay Kumar is ordered to be summoned throughailable warrants in the sum of Rs.5,000/- with one surety in the like amount for 02.05.2023”.

4. From a perusal of the order dated 31.03.2023, it is apparent that even though, the proclamation issued against the present petitioner was received back duly effected, but the statutory period of 30 days had not been elapsed on 31.03.2023 and the Court had adjourned the case to 02.05.2023. On 02.05.2023, the following order was passed by the trial Court:-

“Today the case was fixed for appearance of the accused Anita Devi, but she did not turn up in the Court. Perusal of the file shows that the proclamation was issued against the accused Anita Devi on 17.03.2023 and same was received back duly effected on 24.03.2023. Statement of serving constable was also recorded in this regard to the effect on 24.03.2023 that he went to serve proclamation upon accused Anita Devi on 24.03.2023 and he also placed on record copy of proclamation which is Ex.C1 and his report is Ex.C2. From the statement of Serving Constable, it appears that Proclamation was duly effected against the accused but still accused has not appeared in the Court. The accused

is having knowledge of the present case, but she is intentionally evading her service. Today, report of concerned Ahlmad was also called and as per his report, there is no bail order or stay of arrest qua accused Anita Devi from any Ld. Competent Court. The statutory period of 30 days for awaiting appearance of accused Anita Devi has already expired but she has failed to turn up in the Court. Even today, the case has been called repeatedly during Court hours but the accused Anita Devi has failed to appear. As such accused Anita Devi, W/o Ajay Kumar, R/o Village Sherpur Golind Tehsil and District Hoshiarpur C/o Ajay Optician Main Road Opposite Basra Shuttering Store Bullowal, Hoshiarpur is declared Proclaimed Person. An intimation be sent to SHO of concerned Police Station.

Now, case is adjourned to 30.05.2023 for pre- charge evidence”.

5. Learned counsel for the petitioner submits that as per the mandatory provisions of Section 82 Cr.P.C., a period of not less than 30 days has to be provided for causing appearance to the accused and the said period has to be counted from the date of publication of the proclamation. In the present case, the proclamation was issued on 09.03.2023 requiring the petitioner to appear on 31.03.2023. As per the report of the serving constable, the proclamation was duly effected against the accused on 24.03.2023 and the accused was directed to appear on 31.03.2023. Thus, from the order dated 31.03.2023, it is apparent that the statutory period of 30 days had not

yet elapsed. Thus, the statutory period of 30 days for causing appearance by the accused was not provided and the proclamation as well as order declaring the petitioner as proclaimed person were liable to be quashed by this Court.

6. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner. However, he could not dispute the above referred chronology of events and the orders passed by the trial Court before declaring the petitioner as proclaimed person.

7. I have heard learned counsel for the parties and perused the record. 7. Section 82(1) Cr.P.C., 1973 mandates that a period of not less than 30 days has to be provided for causing appearance from the date of publication of such proclamation. This Court in *Ashok Kumar v. State of Haryana* 2013(4) RCR (Criminal) 550 while interpreting the provisions of Section 82(1) has held that a clear period of 30 days is required to be furnished to the accused and that even in case the Court subsequently adjourned the matter such adjournment beyond 30 days cannot be treated as compliance of provisions of Section 82(1) Cr.P.C., 1973 The relevant extract from the cited judgment reads as follows:-

"4. In view of the above provisions of Section 82(1) Cr.P.C., 1973 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., 1973. 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. In view of the above factual position, the present petition is allowed, as only a period of 07 days (i.e. from 24.03.2023 to 31.03.2023) was afforded to the petitioner (accused) for causing appearance after the proclamation was effected and the in view of the mandatory provisions, the impugned order dated 02.05.2023 (Annexure P-6) passed by the Judicial Magistrate 1st Class, Hoshiarpur is set aside.

9. Since the petitioner has not appeared before the trial Court, he is directed to appear before the trial Court within a period of 03 months from today.

10. Needless to say the petitioner shall be at liberty to apply for granting of bail in terms of the provisions contained in Chapter XXXIII of the Code of Criminal Procedure.

(N.S.SHEKHAWAT)
JUDGE

29.04.2024
amit rana

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