

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

293

CRM-M-32362-2023 (O&M)
Date of decision: 05.03.2024

Komal Sudhir

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Karamjit Verma, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of order dated 15.06.2013 (Annexure P-7), passed by the Chief Judicial Magistrate, Amritsar, in case titled as ***State vs. Vikrant Sharma etc.***, arising out of FIR No. 21 dated 22.01.2009, registered under Sections 498-A, 406 and 317 of the IPC at Police Station Civil Lines, District Amritsar, whereby she had been declared a proclaimed offender.
2. The aforementioned FIR was registered on the statement of complainant Naresh Kumar on 22.01.2009 alleging therein that he got her daughter Pooja married with Vikrant Sudhir on 09.02.2003, who is son of the present petitioner. Sufficient dowry including gold articles and cash amount of money was given in the marriage. However, after some time, she was

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pressurized by her in-laws to bring more dowry, on which, the complainant gave a washing machine and some money in cash as dowry but her in-laws made further demand of a car. In the meanwhile, her daughter was blessed with a female child on 30.01.2004 and again with a female child on 23.08.2008. However, her in-laws kept on pressurizing her to bring more dowry. On 08.11.2008, she was extended beatings and turned out of the matrimonial house by her in-laws along with her younger daughter. On 22.01.2009, the complainant received information that the in-laws of her daughter had gone somewhere leaving Pooja and her younger daughter Vaibhavi in the verandah and due to the cold, Vaibhavi was shivering. He prayed for taking action against the culprits. After registration of the FIR, investigation proceedings were initiated and after completion of the same, the *challan* was presented in Court. However, since the presence of the petitioner could not be secured, proceedings under Section 82 Cr.P.C. were initiated against her and she was declared a proclaimed offender, vide impugned order dated 15.06.2013.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by her counsel that while declaring her a proclaimed offender, the proper procedure as laid down under Section 82 Cr.P.C. had not been followed. The petitioner was never served with any notice/summon/warrants. She is presently aged about 80 years and at the relevant time, she was residing with her daughter, which was in the knowledge of the complainant but she purposely did not disclose the same to the Court concerned so that the petitioner could be declared a proclaimed offender. It is also submitted that vide judgment dated 10.12.2014, all the

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accused, who faced full length trial, have been acquitted by the trial Court. However, the prosecution had filed an appeal before the Sessions Court against the said judgment of acquittal and vide order dated 27.07.2016, passed by the appellate Court, the case had been remanded to the trial Court for fresh trial. Aggrieved from the same, the accused persons had filed a revision petition before this Court, bearing **CRR-3345-2016**, which is pending adjudication and the order of remand, passed by the appellate Court, had been stayed. With these submissions, learned counsel for the petitioner has argued that the impugned order is liable to be set aside.

4. Learned State counsel has argued that the petitioner was having knowledge about the pendency of the trial and had intentionally avoided her appearance before the trial Court. Therefore, she was rightly declared a proclaimed person. Hence, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties and have also gone through the material placed on record.

6. On giving due deliberations to the contentions as raised by learned counsel for the parties and on an overall perusal of the orders passed by the trial Court from the date of initiating proceedings under Section 82 Cr.P.C. as against the petitioner till the date of declaring her a proclaimed person, I am of the considered opinion that the impugned order dated 15.06.2013 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

7. At the outset, it would be relevant to refer to the provision of Section 82 Cr.P.C., which provides for publication of proclamation against the person absconding. It reads as under:

“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.

(4) Where a proclamation published under sub-section (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

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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 subsection (1). ”

8. There are catena of judgments of different High Courts discussing the requirements necessary for issuance and publication of proclamation against an absconder under Section 82 Cr.P.C. and for declaring him as a proclaimed person/offender. These requirements have been discussed from time to time in ***Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561, Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561, Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366, Devender Singh Negi Vs. State of U.P. : 1994 CrL LJ (Allahabad HC) 1783, Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826, Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339, Dilbagh Singh Vs. State of Punjab : (P&H) 2015 (8) R.C.R. (criminal) 166, Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550, Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368, Birad Dan Vs. State : 1958 CriLJ 965, Birad Dan Vs. State : 1958 CriLJ 965, Negi alias Debu Vs. State of U.P. and another, 1994 Cri LJ 1783 and Pal Singh Vs. The State : 1955 CriLJ 318.***

9. The position of law as laid down in the above cited authorities 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.

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(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.

(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.

(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.

(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.

(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. 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

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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.

(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.

(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.

10. On applying the above discussed position of law to the peculiar facts and circumstances of the present case and on a perusal of the order dated 11.04.2013, since the non-bailable warrants issued against the petitioner and co-accused Gaurav were received back unexecuted, the Court had recorded its satisfaction that the accused are intentionally concealing themselves in order to avoid execution of warrants of arrest and ordered publication of proclamation against the accused under Section 82 Cr.P.C. for 06.06.2013. Thereafter, on 06.06.2013, it was observed by the Court that the proclamation

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was duly effected and the statement of the serving police official was recorded and the case was adjourned to 15.06.2013. However, a perusal of the statement of serving police official HC Surinder Singh shows that the proclamation was published on 10.05.2013 requiring the petitioner to cause appearance before the trial Court on 06.06.2013, which means that the petitioner was not granted the statutory period of 30 days to cause her appearance before the trial Court. Hence, the same was in clear violation of the provisions of Section 82(1) Cr.P.C., as per which, a specified time of not less than 30 days is required to be given to the accused from the date of publishing such proclamation which is mandatory in nature. Reliance in this regard can be placed upon ***Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826*** and ***Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339***. Further, vide order dated 06.06.2013, the trial Court, while adjourning the case to 15.06.2013, had not recorded as to on which specific date the proclamation was published by the serving police official 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. Reliance in this regard can be placed upon ***Birad Dan Vs. State : 1958 CriLJ 965***.

12. Accordingly, in view of the above discussion, the present petition is allowed and the impugned order 15.06.2013 (Annexure P-7), passed by the Chief Judicial Magistrate, Amritsar, in case titled as ***State vs. Vikrant Sharma etc.***, arising out of FIR No. 21 dated 22.01.2009, registered under Sections 498-A, 406 and 317 of the IPC at Police Station Civil Lines, District Amritsar,

whereby she had been declared a proclaimed offender, is quashed with all consequential proceedings arising therefrom.

13. However, the petitioner is directed to surrender before the Court concerned within a period of one month from today, subject to order for grant of anticipatory bail, if any passed on her petition to be filed under Section 438 of the Cr.P.C. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioner shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court in accordance with law.

14. Needless to observe that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall be bound to dispose of the same expeditiously and that nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

05.03.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>