

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

119

CRM-M-42296-2021 (O&M)
Date of decision: 05.04.2024

Anoop Kumar ...Petitioner

Versus

Balram Kumar and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Bhuwan Vats, Advocate
for the petitioner.

None for respondent No. 1.

MANISHA BATRA, J. (Oral)

1. CRM-47071-2022

Allowed as prayed for, subject to all just exceptions. Documents
are taken on record as Annexures P-9 and P-10.

2. CRM-13339-2024

Prayer in this application is for preponing the date of the main
case, which is fixed for 28.05.2024.

For the reasons stated in the application, the same is allowed. Let
the main case be preponed and taken up today itself.

3. CRM-M-42296-2021 (O&M)

The instant petition has been filed by the petitioner under Section
482 Cr.P.C. seeking quashing of order dated 20.02.2018 (Annexure P-1),
passed by the Judicial Magistrate First Class, Phillaur in Complaint bearing
No. RBT 271/14/14-5-14, titled as *Balram Kumar vs. Anoop Kumar and
others*, whereby the petitioner had been declared a proclaimed person.

Neutral Citation No.2024: PHHC:010201

4. Brief facts relevant for the purpose of disposal of the present petition are that the petitioner was married to one Sunaina Sharma on 17.08.2010 at Jalandhar as per Hindu rites and rituals. After the marriage, the petitioner had left for California on 17.09.2010 along with his wife Sunaina Sharma. However, they obtained divorce in the USA by way of mutual consent, vide order dated 14.02.2014. The petitioner had paid her a sum of \$15000 to his wife as full and final settlement. However, one Balram Kumar, who was a family friend of Sunaina Sharma, had filed the aforesaid complaint under Sections 406, 498-A of IPC against the petitioner and his family members, by alleging himself to be the maternal uncle of Sunaina Sharma, wherein the petitioner and other family members were summoned, vide order dated 01.08.2014. Since the petitioner was not in India, the summons issued by the trial Court could not be served upon him, whereas the other accused appeared before the trial Court and were admitted to bail. Thereafter, a petition bearing CRM-M-33186-2015 came to be filed by the family members of the petitioner before this Court seeking to quash the said complaint as well as summoning order, which was partly allowed and the summoning order qua offence under Section 498-A IPC was set aside, vide order dated 02.06.2017. Thereafter, the trial had proceeded further qua Section 406 of IPC only. Since the petitioner was residing in USA, he could not appear before the trial Court, consequent to which, proceedings under Section 82 Cr.P.C. were initiated against him and he was declared a proclaimed person, vide impugned order dated 20.02.2018.

5. Learned counsel for the petitioner has argued that while declaring the petitioner a proclaimed person, the proper procedure as laid down under

Neutral Citation No.2024: PHHC:010201

Section 82 Cr.P.C. had not been followed by the trial Court. In fact, when the aforesaid complaint was filed by complainant Balram Kumar on 14.05.2014, the petitioner was in USA as he had left India on 17.09.2010 itself and he never came back to India thereafter. He was never served at his ordinary place of residence in USA. He had already parted ways with his erstwhile wife Sunaina Sharma with mutual consent and there was no basis for filing the aforesaid complaint by Balram Kumar. With these broad submissions, learned counsel for the petitioner has argued that the impugned order is liable to be set aside.

6. There is no representation on behalf of respondent No. 1/complainant, despite having been duly served.

7. I have heard learned counsel for the petitioner at considerable length and have also gone through the material placed on record.

8. 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 him a proclaimed person, I am of the considered opinion that the impugned order dated 20.02.2018 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

9. 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

Neutral Citation No.2024: PHHC:010201

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 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).”

Neutral Citation No.2024: PHHC:010201

10. 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*.

11. 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.
- (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

Neutral Citation No.2024: PHHC:010201

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 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

Neutral Citation No.2024: PHHC:010201

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.

12. On applying the above discussed position of law to the peculiar facts and circumstances of the present case and on a perusal of the copies of the zimini orders, which have been placed on record, it is apparent that either of the provisions of Section 82 Cr.P.C. had not been followed by the trial Court before declaring the petitioner as a proclaimed person. Annexure P-8 (colly.) is copy of order dated 24.08.2017 showing that after receipt of some order from the Hon'ble High Court for framing charge under Section 406 IPC as well against the petitioner and co-accused, notice was ordered to be issued against the petitioner for 12.09.2017. At page 2 of Annexure P-8 (colly.) is placed a copy of order dated 12.09.2017 revealing that summons issued to the petitioner had been received back with report of 'Adampata' i.e. unserved for want of correct address and direction was issued to the complainant to furnish his correct address and then notice to be issued for 07.10.2017. At page 3 of

Neutral Citation No.2024: PHHC:010201

this Annexure is copy of order dated 07.10.2017 showing that though the correct address of the petitioner had not been filed and in view of some previous order dated 03.10.2015, passed by the trial Court, publication charges for ensuring service upon the petitioner had been deposited and direction was issued to make publication for 26.10.2017. Apparently, some previous order might have been passed for securing the presence of the petitioner by issuance of proclamation by way of publication in the newspaper. The petitioner has also placed on record copies of subsequent orders dated 18.11.2017 to 29.11.2018 showing that some application for discharge of remaining accused had been filed on 18.11.2017 and the case was adjourned from time to time for filing reply to that application or for arguments on the same till 29.11.2018 and then the case was adjourned to 20.02.2018. Annexure P-1 is copy of order dated 20.02.2018. The relevant portion of this order is reproduced as under:

“Perusal of the file has revealed that publication for the service of accused no. 1 Anoop Kumar has already been effected for 20.12.2017. Period of 30 days has already been elapsed. None has turned up on behalf of the accused no. 1 Anoop Kumar and he is declared proclaimed person. Summoning in the present complaint has been completed. Now to come up on 05.03.2018 for after summoning evidence of the complainant.”

13. On a bare perusal of this order, it is apparent that some publication was effected for 20.12.2017 against the petitioner and the trial Court by simply observing that a period of 30 days from the date of that publication has since been elapsed, declared the petitioner as a proclaimed person. This is in total violation of the spirit of Section 82 Cr.P.C. First of all,

Neutral Citation No.2024: PHHC:010201

it is not revealed that some previous order for publication of notice upon the petitioner was for declaring him as proclaimed person or not ? Secondly, no satisfaction whatsoever, which was mandatory as per sub-section (1) of Section 82 Cr.P.C., is shown to have been recorded by the trial Court before passing this order. Further, even if it is assumed for the sake of argument that it was for declaring the petitioner as a proclaimed person that the above said publication was made, there is nothing in the order dated 20.12.2018, copy of which has been placed on record, to show that the proclamation was published for that date and the appearance of the petitioner was required to be caused in view of the fact that there was some concealment or avoidance of appearance on his behalf. Therefore, if the petitioner did not appear on 20.12.2018, then instead of adjourning the case further, a fresh proclamation was required to be issued against the petitioner, which procedure had not been followed by the trial Court and it obviously makes the procedure as adopted by the trial Court to be unsustainable in the eyes of law.

14. More so, it is apparent that the petitioner had left India on 17.09.2010 itself for California, USA, which is prior to filing of the present complaint. He has placed on record a photocopy of the passport along with visa pasted on it, which is stamped by the immigration authorities at USA on 17.09.2010. The complainant as well as wife of the petitioner were very much aware of the fact that the petitioner is residing in USA. However, there is nothing on record to show that they had supplied the address of the petitioner in USA to the trial Court, where process could have been sent to him. No letter to Ministry of External Affairs qua service of notice/warrants/proclamation against the petitioner is shown to have been

Neutral Citation No.2024: PHHC:010201

written by the trial Court for effecting service upon the petitioner in USA. As such, it can reasonably be presumed that the process never reached the petitioner and hence, he had no occasion to conceal himself. As such, the action of the trial Court by switching to the proclamation proceedings under Section 82 Cr.P.C. can itself be stated to be bad in the eyes of law. Reliance in this context can be placed upon *Manjit Kaur vs. State of Punjab : 2013 SCC Online (P&H) 8663*. This Court is also apprised of the fact that in pursuance to a compromise having been effected between the parties, the main complaint itself stands dismissed as withdrawn by the trial Court, vide order dated 04.05.2019.

15. Accordingly, the present petition is allowed and the impugned order dated 20.02.2018 (Annexure P-1), passed by the Judicial Magistrate First Class, Phillaur in Complaint bearing No. RBT 271/14/14-5-14, titled as *Balram Kumar vs. Anoop Kumar and others*, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

16. The Registry is directed to send a copy of this order to the Court concerned for information.

05.04.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned Yes

Whether reportable Yes