



CRM-M-34413-2024 (O&M)

102-A

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34413-2024 (O&M)
Date of Decision: 10.09.2024

Gulshan @ Gulchaman

.. Petitioner

Vs.

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Amarjit Kaur Khurana, Advocate for the petitioner.

Mr. Adhiraj Singh Thind, AAG, Punjab.

...

SUMEET GOEL, J. (Oral)

1. This is the second petition filed under section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023, seeking quashing of order dated
01.07.2024 (Annexure P-3), passed by the learned Judicial Magistrate, 1st
Class, Amritsar in case FIR No.296 dated 15.09.2023, registered at Police
Station Division B, District Police Commissionerate, Amritsar, whereby the
petitioner was declared proclaimed offender.

2. While assailing the impugned order dated 01.07.2024
(Annexure P-3), the learned counsel for the petitioner argued, that the order
declaring the petitioner as proclaimed offender is not sustainable and is
liable to be set-aside. It is argued that no effective step was taken in the case
to serve the petitioner with warrants before issuance of proclamation against
him. It is submitted that a false address of the petitioner is mentioned in the
case by the police, whereas, the petitioner never resided at the said address.

It is submitted that the address of the petitioner as mentioned in the case
proceedings by the police is Flat No.102-D, Jalandhar Heights. Whereas,

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the actual address of the petitioner as per his Aadhar Card is '*Gulchaman son of Gyan Chand, H.No.5840, Ward No.15, Mohalla Guru Nanakpura, Nakodar, District Jalandhar*'. It is further submitted that firstly, the address of the petitioner as given in the case by the police is false. Secondly, the said address is incomplete address as no locality, village, town or city is mentioned in the said address. In view of the said situation, the petitioner could not have been served with any warrants of arrest. Accordingly, the issuance of proclamation against the petitioner is also bad in law and cannot be sustained.

3. Learned State counsel has opposed the claim of the petitioner seeking quashing of the order declaring the petitioner as proclaimed offender in the case. While refuting the case of the petitioner, detailed arguments concerning the merits of the case were made and it is argued that the offence alleged against the petitioner is serious and heinous. However, no material has been presented to show that the petitioner is or was residing at the address mentioned in the case by the police.

4. I have heard the learned counsel for both the petitioner as well as the State and carefully perused the record of the case.

5. It is pertinent to mention herein that the petitioner had earlier approached this Hon'ble Court by way of petition under Section 482 of Cr.P.C., 1973 on the same cause of action which was disposed off vide order dated 15.07.2024, relevant whereof reads as under:

"1. Learned counsel appearing for the petitioner seeks to withdraw the present petition so as to enable the petitioner to file an appropriate petition/application, in accordance with law, in terms of provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. Ordered accordingly.

3. Pending applications, if any, shall also stand disposed off."

It is further pertinent to mention herein that the petitioner had

earlier challenged the P.O. proceedings, initiated against him, vide CRM-M-

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30738-2024, which was rendered infructuous on account of the petitioner having been declared as proclaimed offender vide the impugned order dated 01.07.2024.

6. The facts of the present case narrate a very sordid course of procedure, adopted by the trial Court. Perusal of order dated 28.03.2024 (Annexure P-5) passed by the Judicial Magistrate shows that the non-bailable warrants issued against the petitioner remained unserved. As such, fresh non-bailable warrants were issued against the petitioner for 13.05.2024. Thereafter, on 13.05.2024 the Judicial Magistrate noted that the non-bailable warrants issued against the petitioner remained unserved with the report that the accused was not available at home. In pursuance of which, the Judicial Magistrate passed the order that in the interest of justice and to speed up the case, the accused be served through proclamation to be issued under section 82 of Cr.P.C. for 01.07.2024. As is apparent from the bare perusal of the impugned order dated 01.07.2024 (Annexure P-3), the learned Judicial Magistrate, on the basis of the report forwarded by the Ahlmed, observed that the service on the present petitioner, *inter alia*, other absconding accused has been effected and consequent to the petitioner's non-appearance on the concerned date recorded a satisfaction to the effect that the petitioner is absconding. Accordingly, the petitioner was declared proclaimed offender.

7. I find the course adopted by the Judicial Magistrate, as antithesis to the provisions of Section 82 of the Code of Criminal Procedure, 1973. The learned Judicial Magistrate has committed gross illegality by issuing the said proclamation under Section 82 of the Criminal Procedure Code, 1973, without complying the mandatory requirements of law. Hence,

the same is not sustainable in law and continuation of the same will amount



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to abuse of process of law. Section 82 of the Criminal Procedure Code, 1973 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 Sections 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).]”

8. A coordinate Bench of this Court while dealing with invocation of the provision of Section 82 of the Code of Criminal Procedure, against an accused in the case of ‘**Sonu v. State of Haryana, 2021(1) RCR (Criminal) 319**’, held as under:

“9. The essential requirements of section 82 of the Cr.P.C., 1973 for issuance and publication of proclamation



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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 v. State of Delhi*: 2008 CrL 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., 1973. (See *Rohit Kumar v. State of Delhi* : 2008 CrL 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 v. Emperor* : AIR 1943 Patna 366 and *Devender Singh Negi v. State of U.P.* : 1994 CrL 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 v. State of Mysore* : 1969 CriLJ 826 and *Shokat Ali v. 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 v. State of Punjab (P&H)* : 2015 (8) RCR (CRIMINAL) 166 and *Ashok Kumar v. 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., 1973. 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., 1973 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 v. 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,



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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 v. 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., 1973. 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 v. State: 1958 CriLJ 965).

(xi) The conditions specified in section 82(2) of the Cr.P.C., 1973 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 v. State of U.P. and another: 1994 CriLJ 1783 and Pal Singh v. The State: 1955 CriLJ 318)."

9. In view of the provisions of above quoted Section 82 of the Code of Criminal Procedure and the authoritative judgment interpreting the applicability of the provisions of Section 82 of the Code of Criminal Procedure, the issuance of proclamation in the present case is clearly not sustainable. The provisions of Section 82 do not in manner prescribe that the proclamation against the accused can be issued just to speed up the trial, as has been done by the Judicial Magistrate, in the facts of the present case. Further more, it is totally inexplicable that how the issuance of such a proclamation will serve the interest of justice. Proceedings in a criminal trial cannot be construed and pursued just with an endeavour to rush up the same, under the garb of interest of justice. Interest of justice would be better served if the procedure adopted is supporting the cause of prosecution as

well as accused, both in equal manner. The prospect of one party cannot be

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prejudiced to serve the purpose of other. The concept of fair trial entails into itself equal opportunity to both the prosecution as well as the accused to participate in the court proceedings.

10. It is pertinent to mention that by now it is a settled principle of law that the Court which issues the proclamation under Section 82 of Cr.P.C., must record its satisfaction that the accused in respect of whom the proclamation is being made, is absconding or concealing himself to evade his arrest. The predominant requirement for invocation of provisions of Section 82 of the Code of Criminal Procedure is clearly lacking in the present case. Perusal of order dated 13.05.2024 passed by the Judicial Magistrate shows that no satisfaction has been recorded while issuing the proclamation that the accused-petitioner has absconded or is concealing himself so that warrants of arrest against him cannot be executed. There was no material present before the Judicial Magistrate to record such a satisfaction. Rather, the case put forth by the petitioner before this Court, that he has never resided at the address given by the police in the case, clearly shows that he was never served with any warrants before issuance of proclamation against him.

11. Strangely the impugned order dated 01.07.2024 passed by the Judicial Magistrate, declaring the petitioner as proclaimed offender has relied upon statement of serving official to hold that the proclamation issued against the petitioner has been affected. Whereas, record of the case shows that after issuance of proclamation on 13.05.2024 by the Court against the petitioner, a report dated 15.05.2024 was submitted to the Court by the Police Station. This report annexed as Annexure P-6 to the petition shows that in this report it is mentioned that when the police official went to serve

the arrest warrant issued against the petitioner at his given address in the

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case, the person owner of said premises stated to the police that the petitioner never stayed at said address, but the complainant and victim have mentioned said address of the petitioner in the complaint. In this report by the police, issuance of fresh arrest warrant of the petitioner was prayed for. But the Judicial Magistrate while passing the impugned order declaring the petitioner as proclaimed offender in the case has been totally oblivious of said service report of warrants by the police. As was enunciated in para 9 (vi) of the judgment in the case of ***Sonu (supra)***, the proclamation has to be published in the manner laid down in section 82(2) of the Cr.P.C., 1973. 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. In view of the fact that the address so given by the prosecution on the case file, was wrong and the accused never resided at the address so given, it can be safely held that the condition so enumerate in para 9(vi) of ***Sonu (supra)***, was not complied with and the impugned order is liable to be set aside on this score alone.

12. The provisions of Section 82 of the Code of Criminal Procedure having serious ramifications qua the right of the accused concerning his presence in the criminal trial proceedings ought not be and cannot be invoked in casual and cavalier manner. The requirement of recording of satisfaction, that the accused has absconded or is concealing himself so that warrant of his arrest cannot be executed, as embodied in Section 82 of the



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relevant material available on record of the case in that regard. Non-adherence to said requirement while declaring the accused as proclaimed offender vitiates the proclamation proceedings initiated against the accused.

13. In view of the above findings, in the entirety of facts and circumstances of the present case, the present petition is allowed and the order dated 01.07.2024 (Annexure P-3) passed by the Judicial Magistrate, 1st Class, Amritsar in FIR No.296 dated 15.09.2023, registered at Police Station Division B, District Police Commissionerate, Amritsar, declaring the petitioner as proclaimed offender is quashed.

14. Pending application(s), if any, shall also stand disposed of accordingly.

10.09.2024
jasmine

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No