



272 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-35746-2024

Date of Decision: 24.09.2024

Rohit Kapoor

...Petitioner

Vs.

State of Punjab and Anr.

...Respondents

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

Present: Ms. Sunita Nambiar, Advocate
 for the petitioner.

Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

1. The petitioner has filed the present petition under Section 482 of Cr. P.C with a prayer to quash the impugned order dated 01.04.2024 (Annexure P-15) passed by the Court of Chief Judicial Magistrate, Ludhiana, whereby the present petitioner has been declared as a proclaimed person in a complaint bearing No. COMA-8195-2019 (Annexure P-2) dated 15.07.2019, under Section 276-B read with Section 278-B of Income Tax Act, titled as *“Deputy Commissioner Income Tax Officer (TDS) Vs. M/s Ace Healthways Private Ltd. & others”*.

2. Learned counsel for the petitioner contends that a complaint No. COMA-8195-2019 titled as *“Deputy Commissioner Income Tax Officer (TDS) Vs. M/s Ace Healthways Private Ltd. & others”* under Sections 276-B read with Section 278-B of Income Tax Act was filed against the petitioner by respondent No.2. On 17.08.2019, the summons were issued for the service of the petitioner, however, the same was received back with the report that the



petitioner had shifted. Thereafter, again the notices were issued on 29.11.2019 and 26.02.2020 on the filing of the correct address by the complainant. During the course of trial proceedings, even bailable warrants were issued against the petitioner on 15.10.2022 and 27.03.2023, however, the same were received back unserved and the Court came to the wrong conclusion that the petitioner was deliberately avoiding his presence in the present case. Even, the bailable warrants, which were issued for the service of the petitioner has been received back with the report that the factory had been closed and were returned as unserved. Learned counsel further contends that the petitioner was never served with any notice or warrant by the police regarding the complaint at the address, where the petitioner was residing. He further contends that ultimately, vide order dated 20.12.2023, fresh proclamation under Section 82 of Cr.P.C was issued against the petitioner for 14.02.2024. On 14.02.2024, the matter was taken up and the statement of serving official was recorded. Since the statutory period of 30 days had not lapsed as yet, the case was adjourned to 14.03.2024 for the presence of the petitioner. Again on 14.03.2024, the case was adjourned to 01.04.2024. Ultimately, vide order dated 01.04.2024, the petitioner was declared as a proclaimed person in the present case.

3. On the other hand, learned State counsel had vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner had intentionally not appeared before the Trial Court for several months and is not entitled for any relief. It was submitted that the petitioner had the knowledge of pendency of the proceedings against him, however, he chose not to appear before the Trial Court and the petition is liable to be dismissed. However, learned State counsel could not rebut the factual submissions made



by learned counsel for the petitioner in the present case.

4. It has been held by this Court in the matter of **Ashok Kumar Vs.**

State of Haryana and Anr.2013(4) RCR (Criminal) 550 as under:

3.“As per order dated 04.01.2013 passed by the learned Additional Chief Judicial Magistrate, Panipat the case has been adjourned for 06.03.2013 for issuing of proclamation under Sections 82 and 83 Cr.P.C.against petitioner Ashok Kumar. The order dated 06.03.2013, shows that proclamation issued against Ashok Kumar received back duly executed. Statement of Serving Constable was also recorded. Period of 30 days had not elapsed from the date of publication. Therefore, the case was adjourned to 13.3.2013. On that day, the petitioner was declared as proclaimed offender. The original record also shows that the statement of the serving official, namely, ASI Dilbag Singh was recorded on 6.3.2013, who stated that on 9.2.2013, he visited the place of residence of the accused along with proclamation. After reading publicly, the proclamation was affixed at conspicuous part of the house of the accused where he ordinarily resides. A copy of the proclamation was also affixed at conspicuous part of the Court house, which means that the publication was effected on 9.2.2013 for 6.3.2013, which shows that after the publication of the notice, the accused was not given the mandatory period of 30 days to appear before the Court. The mere fact that the Court adjourned it after the period of 30 days will not be treated as compliance of the provisions of Section 82 (1) Cr.P.C. where it is provided that :-

“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.

(1) XX XX XX XX XX XX XX

(2) XX XX XX XX XX XX XX

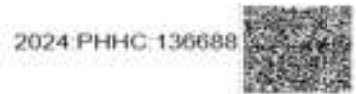
4. *“In view of the above provisions of Section 82(1) Cr.P.C., it is clear that the publication was effected on 9.2.2013 and the accused was directed to appear in the Court as per that publication on 6.3.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned 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”.*

5. Still further, it has been held by this Court in the matter of **Avtar Singh Vs. State of Punjab and Anr. in CRM-M-1866-2017** which is as under:-

“The above quoted provision is clear that through the proclamation made prior to declaration of a person as a proclaimed offender, he should be given not less than thirty days from the date of its proclamation to appear at a specified place and a specified time.

In the case in hand, thirty days were not given to the petitioner to appear before the Trial Court as the proclamation was made on 13.05.2011 requiring him to appear before the Trial Court on 14.05.2011. Thus, the proclamation and the subsequent order dated 03.09.2011 (Annexure P-2) declaring the petitioner to be a proclaimed offender do not confirm with the mandate of Section 82 (1) of the Code.

6. In the present case also, this Court has no hesitation to hold that the mandatory provisions of Section 82 of the Cr.P.C have not been complied by



the Trial Court. In the present case, the statutory notice of 30 days was not granted to the petitioner and any further adjournment can never be construed as sufficient compliance of the provisions of Section 82 (1) of the Cr.P.C. Thus, the impugned order dated 01.04.2024 (Annexure P-15) passed by the Court of Chief Judicial Magistrate, Ludhiana is liable to be set aside by this Court.

7. Since the matter is pending for the last more than 05 years before the Trial Court, no purpose will be served by sending the petitioner behind the bars after such a long period. Consequently, the petitioner should be granted a chance to appear before the Trial Court to join the Trial Court proceedings.

8. Consequently, the petitioner is permitted to surrender before the Trial Court/Area Magistrate/Duty Magistrate within a period of six weeks from today and on his surrender, he shall be admitted to bail by the concerned Court on his furnishing bail bonds/surety bonds to the satisfaction of the concerned Court. The Court, which admits the petitioner to bail, shall also be at liberty to impose such reasonable conditions, as provided by law. In case, the petitioner does not surrender within a period of six weeks from today, the present petition shall be deemed to be dismissed by this Court.

9. The petition is disposed off in above terms.

(N.S.SHEKHAWAT)
JUDGE

24.09.2024
hitesh

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