

2024:PHHC:152800



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

**CRM-M-36763-2024 (O&M)
Date of Decision:18.11.2024**

Gursewak Singh ...Petitioner

Vs.

State of Punjab ...Respondent

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

Present: Mr. Harpal Singh Sidhu, Advocate
for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

N.S.Shekhawat J.

CRM 43324 of 2024

1. Allowed as prayed for.
2. The main case is preponed and taken up for hearing today itself.

CRM-M-36763-2024

1. The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to quash the impugned order dated 20.03.2024 (Annexure P-6) passed by the Sub Divisional Judicial Magistrate, Patti, whereby, the petitioner has been declared as proclaimed offender in a case FIR No. 198 dated 03.07.2020 under Sections 148/149 of IPC, Section 51-B of DM Act 2005 and Sections 25/27 of Arms Act registered at Police Station

City Patti, District Tarn Taran.

2. Learned counsel for the petitioner contends that the petitioner was falsely involved in a case, i.e., FIR No. 198 dated 03.07.2020 under Sections 148/149 of IPC, Section 51-B of DM Act 2005 and Sections 25/27 of Arms Act registered at Police Station City Patti, District Tarn Taran (Annexure P-1). After the registration of the FIR, the petitioner was granted the concession of regular bail on 07.09.2022 and, thereafter, the petitioner joined the investigation regularly. In the meantime, on 07.09.2022, the police had presented the challan at the back of the petitioner. Even, no summons/warrants were served on the petitioner and he could not appear before the trial Court. Ultimately, vide order dated 29.01.2024, the trial Court held that the presence of the petitioner could not be procured in an ordinary manner and the proclamation against the petitioner was ordered to be effected till 12.02.2024 and the case was adjourned to 28.02.2024 for awaiting the presence of the petitioner. On 28.02.2024, the case was taken up and vide order (Annexure P-5), the Court observed that the statutory period of 30 days had not elapsed and the case was adjourned to 20.03.2024 for awaiting the presence of the petitioner. On the next date, i.e., 20.03.2024, the Court had wrongly declared the petitioner as proclaimed offender. Learned counsel for the petitioner contends that as per the provisions of Section 82 of Cr.P.C., the trial Court was under a legal obligation to provide a statutory period of minimum 30 days to appear before the trial Court and when the trial Court had realized the said lapse, the case was adjourned to 20.03.2024 for completion of the statutory period of 30 days. However, such an

adjournment does not meet the requirement of the provisions of Section 82 Cr.P.C.

3. On the other hand, learned State counsel has 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. Vide the order dated 29.01.2024, the proclamation of the accused/petitioner was ordered to be effected till 12.02.2024 and the case was adjourned to 28.02.2024. On 28.02.2024, the proclamation of the petitioner was received back duly served and statement of the serving police official was recorded by the trial Court and since the statutory period was less than 30 days, the case was adjourned to 20.03.2024 for awaiting the presence of the petitioner. In fact, the trial Court had not granted the statutory period of 30 days to the petitioner to appear before the trial Court and any adjournment to comply with the statutory period cannot be construed as sufficient compliance of provisions of Section 82(1) of Cr.P.C. Thus, in view of the law laid down by this Court in the matter of **Ashok Kumar and Avtar Singh (supra)**, it can be safely concluded that the trial Court had not complied with the provisions of Section 82(1) Cr.P.C., while declaring the

petitioner as proclaimed offender.

7. In view of the above discussion, impugned order dated 20.03.2024 (Annexure P-6) passed by the Sub Divisional Judicial Magistrate, Patti, whereby, the petitioner has been declared as proclaimed offender in a case FIR No. 198 dated 03.07.2020 under Sections 148/149 of IPC, Section 51-B of DM Act 2005 and Sections 25/27 of Arms Act registered at Police Station City Patti, District Tarn Taran is ordered to be set-aside.

8. Consequently, the petitioner is permitted to surrender before the learned 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.

18.11.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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