



102/1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-38364-2024

Date of Decision:08.11.2024

Rachpal Singh

...Petitioner

Vs.

State of Punjab

...Respondent

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

Present: Mr. Supneet Singh, Advocate for
Mr. Harmanpreet Singh, Advocate
for the petitioner.

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

N.S.Shekhawat J.

1. The petitioner had filed the present petition under Section 528 of B.N.S.S with a prayer to quash the impugned order dated 07.01.2023 (Annexure P-9) passed by the Court of Judicial Magistrate Ist Class, Amritsar, whereby the petitioner was declared as a proclaimed person in a case arising out of FIR No.140, dated 24.05.2021, registered under Sections 419, 420, 467, 468, 471, 448, 511, 506, 148, 149 and 120-B of IPC, Police Station Maqboolpura, District Police Commissionerate, Amritsar (Annexure P-1).

2. Learned counsel for the petitioner contends that the petitioner has been falsely involved in the abovesaid FIR (Annexure P-1). The petitioner was not initially named in the FIR and had no knowledge with regard to the pendency of the proceedings against him. Learned counsel further contends that even the summons/warrants were issued against the petitioner on a wrong address and he was never served in the present case. Even, the



summons/warrants were received back by the Trial Court unexecuted and the Trial Court came to the wrong conclusion that the petitioner was absconding and concealing himself, so that the warrants may not be executed. In reality, the prosecution had not taken any effective steps to serve the present petitioner. Ultimately, vide order dated 02.06.2022 (Annexure P-4), the proclamation was issued against the petitioner for 24.08.2022, whereas, the case was adjourned to 22.07.2022. Since, the Presiding Officer was on leave on 22.07.2022, the case was adjourned to 06.09.2022. On 06.09.2022, again the proclamation under Section 82 of Cr.P.C was issued for 30.11.2022 and it was ordered that the proclamation be duly effected before 29.10.2022. On 29.10.2022, the proclamation issued to the petitioner/accused was not received back and the same was awaited till 30.11.2022. On 30.11.2022, the statement of serving official was recorded by the Court and he clearly stated that the proclamation proceedings were conducted on 24.11.2022. Ultimately, the case was taken up on 30.11.2022 and since, the proclamation was published just six days ago i.e. on 24.11.2022, the case was adjourned to 07.01.2023 for awaiting the appearance of the petitioner/accused. Ultimately, vide order dated 07.01.2023 (Annexure P-9), the petitioner was ordered to be declared as a proclaimed person. Learned counsel further contends that the petitioner had been wrongly declared as a proclaimed person by completely overlooking the mandatory provisions of Section 82 Cr.P.C. In fact, the as per the provisions of Section 82 of Cr.P.C., the Court was bound to grant a notice period of clear 30 days, before declaring the petitioner as proclaimed person. In the present case, the proclamation was effected on 24.11.2022 and the petitioner was ordered to appear on 30.11.2022. Since, the statutory period of 30 days had not elapsed,



the case was adjourned to 07.01.2023 for appearance of the petitioner/accused. He further contends that such an adjournment by the Trial Court would not be construed as sufficient compliance of the provisions of Section 82 of Cr.P.C.

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. As per the statement of Serving Constable, the proclamation was published on 24.11.2022 i.e 06 days prior to the date fixed for the appearance of the petitioner/accused before the Trial Court and the statutory notice of 30 days was not granted to the petitioner. Since the period was less than 30 days, the case was adjourned to 07.01.2023 and such adjournment cannot be taken as sufficient compliance of the provision of Section 82 (1) of the Cr. P.C. Thus, in view of the mandatory provisions of Section-82 of Cr.P.C and the ratio 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 person and the impugned order is illegal and unsustainable.

7. In view of the above discussion, the impugned order dated 07.01.2023 (Annexure P-9) passed by the Court of Judicial Magistrate Ist Class, Amritsar is illegal and unsustainable and is liable to be quashed by this Court.

Since the matter had remained pending for the last several years, no purpose



will be served by sending the petitioner behind the bars after such a long period.

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.

08.11.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

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