



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

CRM-M-42527-2022

Date of Decision:05.11.2024

Yadvinder Singh

...Petitioner

Vs.

State of Haryana

...Respondent

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

Present: Mr. Rishabh Chaudhary, Advocate with
 Mr. Rajender Kumar, Advocate and
 Mr. Amandeep Sandhu, Advocate
 for the petitioner.

Mr. Rajinder Kumar Banku, Deputy Advocate General, Haryana.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 of Cr.P.C. with a prayer to quash the impugned order dated 04.07.2019 (Annexure P-12) passed by the Court of Additional Sessions Judge, Kurukshetra, whereby the petitioner has been declared as a proclaimed offender in a case arising out of FIR No.113, dated 04.10.2012, registered under Sections 148, 149, 323, 324, 325, 326 of IPC, Police Station Ismailabad, District Kurukshetra.

2. Learned counsel for the petitioner contends that the petitioner has been falsely involved in the present case. After the registration of the case, the petitioner applied for grant of bail and was granted the concession of bail. The petitioner appeared before the Trial Court and vide judgment of conviction dated 31.10.2015 and order of sentence dated 04.11.2015, passed by the Court of Additional Sessions Judge, Kurukshetra, the petitioner was convicted for



commission of the offences punishable under Sections 148/323/324/326 read with Section 149 of IPC and was sentenced to undergo RI for a maximum period of 03 years. He further contends that the sentence imposed on the petitioner and the other accused was suspended till 03.12.2015, so as to enable him to file an appeal before this Court. The petitioner was not properly advised by his counsel representing him before the Trial Court and he did not file an appeal. Consequently, vide order dated 05.12.2015, arrest warrants were issued against the petitioner. Still further, since the petitioner had not appeared before the Trial Court, warrants of arrest issued against him. However, warrants of arrest were never served on him, as the petitioner had already gone abroad. Learned counsel further contends that even the Court was aware of the fact that the petitioner was abroad, still no efforts were made to serve him through the embassy in that country. Ultimately, vide order dated 14.05.2019, the Trial Court issued proclamation against the petitioner under Section 82 of Cr.P.C for 30.05.2019. On 30.05.2019, the statement of serving Constable was recorded and he stated that he had affixed the proclamation on the house of the petitioner as well as on the conspicuous place in the village. Even, one copy of the order was affixed on the notice board of the Court. However, it was nowhere stated that the copy of proclamation was read publically at some conspicuous place in the village. On 30.05.2019, the Court noticed that the statutory period of 30 days had not elapsed, the case was adjourned to 04.07.2019 for the presence of the petitioner. Learned counsel for the petitioner further contends that in order to ensure that an accused should have a fair opportunity to appear, 30 days clear notice is necessary and the proclamation should be published in the manner as provided by the law. In the present case, the proclamation of the petitioner was



issued on 14.05.2019 and the petitioner was directed to appear on 30.05.2019. Thus, clear notice of 30 days as mandated by Section 82 of Cr.P.C was not given to the petitioner and even the proclamation was not read over at a conspicuous place in the village.

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:-

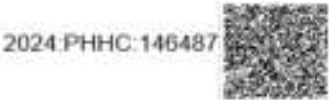


“The above quoted provision is clear that through the proclamation made prior to declaration of a person as a proclaimed offender, he should be given not less than thirty days from the date of its proclamation to appear at a specified place and a specified time.

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 18.05.2019 i.e 12 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 30.05.2019 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 offender and the impugned order is illegal and unsustainable.

7. In view of the above discussion, the impugned order dated 04.07.2019 (Annexure P-12) passed by the Court of Additional Sessions Judge, Kurukshetra 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.

05.11.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No