

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

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CRM M-262 of 2021 (O&M)

Date of Decision: 06.03.2024

Manjinder Singh Bhullar

...Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Amit Dhawan, Advocate
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

Mr. Sahil Bansal, Advocate for
Mr. Abhinav Vinayak, Advocate, for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed a present petition under Section 482 Cr.P.C., with a prayer to quash the order dated 23.09.2016 (Annexure P-4), declaring the petitioner as a proclaimed offender. A further prayer has been made to quash the FIR No. 109 dated 16.07.2014 under Sections 307, 427, 201, 148 and 149 of IPC and Section 25 of the Arms Act, registered at Police Station Lohian, Tehsil and District Jalandhar and all subsequent proceedings emanating therefrom, on the basis of the compromise between the parties.

2. Learned counsel for the petitioner submits that in the present case, the FIR was ordered to be registered against the petitioner on 16.07.2014. After the registration of the FIR, the petitioner had gone abroad to earn his livelihood on 27.06.2016.

Learned counsel next contends that due to this, the petitioner absented from trial on 30.07.2016 and his bail bonds and surety bonds were ordered to be cancelled and forfeited to the State. Vide order dated 09.08.2016, the petitioner was ordered to be summoned through proclamation under Section 82 Cr.P.C., for 22.08.2016. On 22.08.2016, the statement of serving Constable Supreet Singh was recorded. He stated in his statement that proclamation notice of Manjinder Singh Bhullar, petitioner was marked on to him 19.08.2016 and he had affixed the copy of the proclamation notice outside the house of the petitioner and also affixed one copy of proclamation notice on a public place and also on the notice board of the Court. On 22.08.2016, the statutory period of 30 days had not been expired and the trial Court adjourned the matter for 23.09.2016 for appearance of the accused. However, no fresh proclamation was issued by the trial Court. Learned counsel has placed reliance on (Annexures P-10 to P-12) in support of the above submissions. Learned counsel further submits that since the clear statutory period of 30 days was not granted to the petitioner in compliance of Section 82 Cr.P.C., the impugned order dated 23.09.2016 passed by the trial Court is legally unsustainable. Apart from that, the petitioner was living abroad and no efforts were made to serve the proclamation notice upon the petitioner at his address.

3. On the other hand, learned State counsel could not controvert the above stated factual submissions. Whereas, learned

counsel appearing on behalf of respondent No. 2 submits that he has no objection, in case the present petition is allowed as the parties have already entered into a compromise.

4. I have heard learned counsel for the parties and perused the record.

5. 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”.

6. 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.

7. 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 order dated 09.08.2016, the proclamation of the accused was issued for 22.08.2016. however, from the statement of the serving constable, it is evident that the proclamation was published on 19.08.2016, i.e. 03 days prior to the date of appearance fixed before the trial Court and the statutory period of 30 days was not granted to the petitioner and since the period was less than 30 days, the case was adjourned to 23.09.2016. However, the adjournment to 23.09.2016 can never be construed 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.

8. Still further, from a cumulative reading of the above referred provisions of the Code, it is evident that all the persons, who are absconding or concealing themselves so that the warrants may not be executed, cannot be declared as proclaimed offender. Only where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under the offences mentioned in Section 82(4) Cr.P.C. and such person fails to appear at the specific place and time required by the proclamation, the Court may pronounce such person as proclaimed offender. However, if the proclamation is respecting the offence, other than the offences mentioned in Section 82(4) Cr.P.C., then such persons, who are absconding and concealing themselves to affect the execution of warrants of arrest, could be declared as proclaimed persons. From a plain reading of the provisions of Section 82 of Cr.P.C., it is evident that there is a distinction between a proclaimed person and a proclaimed offender. The said distinction is further reinforced by the provisions of Section 174-A IPC. As per Section 174-A IPC, if a person is declared as “proclaimed person” then he shall be punished with imprisonment for a term, which may extend to three years and or fine or both and where a declaration has been made in sub-section 4 of Section 82 Cr.P.C. pronouncing him as a “proclaimed offender”, he shall be punished with the imprisonment for a term which may extend

to seven years and shall also be liable to fine. Thus, from the scheme of Code itself, it is evident that the words “Proclaimed Person” and “Proclaimed Offender” have different meanings and different punishments have been provided under the statute for the said violation of law. Even similar observations have been made by this Court in the matter of Satinder Singh Vs. The State of U.T., Chandigarh and another, 2011(2) R.C.R. (Criminal) 89.

9. From the above referred discussion, it is evident that the trial Court had wrongly declared the petitioner as proclaimed offender and the impugned order dated 23.09.2016 (Annexure P-4) is illegal and unsustainable and liable to be quashed. Ordered accordingly.

10. A further prayer has been made in the present case with a prayer to quash the FIR No. 109 dated 16.07.2014 under Sections 307, 427, 201, 148 and 149 of IPC and Section 25 of the Arms Act, registered at Police Station Lohian, Tehsil and District Jalandhar and all subsequent proceedings arising therefrom on the basis of the compromise.

11. It is apparent from the facts of the case that it is a case of no injury and it has been only stated that the accused had fired shots with an intention to kill the complainant side. However, no one was hurt in the present case. Apart from that, it is apparent that vide order dated 19.04.2018 passed in CRM M-3412 of 2018 (Annexure P-7), this Court has already quashed the FIR qua the co-accused, namely, Bikramjit Singh @ Dimpy, Tejinder Singh @ Lembar, Inderjit Singh

@ Gogi and Paramjit Singh @ Pamma on the basis of the compromise.

12. Vide order dated 04.04.2022, a Co-ordinate Bench of this Court had directed the parties to appear before the Illaqa Magistrate/trial Magistrate for getting their statements recorded with respect to the compromise (Annexure P-5).

13. Pursuant to aforesaid order, the parties have appeared before the Additional District and Sessions Judge, Jalandhar and got their statements recorded. Report dated 22.07.2022 has been received whereby after recording the statements of the parties, the Court below has shown its satisfaction that the compromise is genuine, voluntary and without any coercion or undue influence.

14. In the light of the satisfaction shown by the Court below and considering the offence for which the accused have been charged are not of serious nature, together with the fact that compromise will go a long way in ironing out the differences for betterment of future life of the parties and also in view of the law laid down in **Gian Singh Vs. State of Punjab and another, 2012 (4) RCR (Criminal) 543** and **Kulwinder Singh and others Vs. State of Punjab 2007(3) RCR (Criminal) 1052**, the present petition for quashing the FIR is allowed qua the petitioners.

15. Resultantly, FIR No. 109 dated 16.07.2014 under Sections 307, 427, 201, 148 and 149 of IPC and Section 25 of the Arms Act, registered at Police Station Lohian, Tehsil and District

Jalandhar alongwith all consequential proceedings arising therefrom
are hereby quashed qua the petitioners.

06.03.2024

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No