



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM M-44068 of 2022
Date of Decision: 09.08.2024

Virender Singh @ Virender Singh Khatgarh ...Petitioner
Versus
State of Haryana ... Respondent

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

Present : Mr. Diwan Singh Adlakha, Advocate
for the petitioner.

Mr. Rajinder Kumar Banku, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. While issuing notice of motion, this court had noted the following contentions on 28.09.2022:-

“Prayer in this petition, filed under Section 482 of the Code of Criminal Procedure, 1973, is for quashing of impugned order dated 03.11.2009 (Annexure P-6), passed by learned Judicial Magistrate Ist Class, Karnal, as well as FIR No. 584, dated 01.10.2021, under Section 174-A IPC, registered at Police Station Karnal Civil Lines, District Karnal (Annexure P-1), and all consequential proceedings arising therefrom.

Learned counsel for the petitioner submits that FIR No. 352, dated 24.09.2004, registered at Police Station Civil Lines, Karnal, was investigated and challan under Sections 167, 177, 120-B IPC, Section 3 of PID Act, 1922, Section 4 of PFRR Act, 1966 and Sections 13 and

15 of PRB Act, 1867, was submitted against Narinder Singh, Mohan Lal and Virender Singh @ Virender Singh Khatgarh (present petitioner). One of the co-accused Krishan Kumar was found innocent and another coaccused Raja Ram had expired in a road accident.

Learned counsel for the petitioner further submits that after presentation of challan, due to some misunderstanding with regard to the court proceedings, petitioner left for abroad to meet out his financial crises, on a valid visa and valid police clearance. Thereafter, many a times from 2014 to 2018, petitioner has been coming back to India and then going abroad (Australia) after obtaining necessary clearance from immigration office. The said aspect is clear from the entries made in the passport of the petitioner, copy of which is Annexure P-7.

Learned counsel for the petitioner also submits that two of the accused, namely, Narinder Singh and Mohan Lal, who faced trial, were acquitted vide judgment dated 03.12.2010 (Annexure P-8), passed by learned Judicial Magistrate Ist Class, Karnal, in Criminal Case No. 363 of 2009. Learned counsel refers to paragraph Nos. 27 and 28 of the said judgment, wherein Court has found that there is no evidence on record to suggest that the accused had committed the offence as alleged. Even the Court concluded that there was no basis in the prosecution allegations and the entire FIR and subsequent proceedings were absolute farce. It is also observed in paragraph No. 28 of the said judgment that investigating agency has played as a puppet to the hands of the higher officials just to harass the accused. By

recording such findings, co-accused of the petitioner, namely, Narinder Singh and Mohan Lal, have already been acquitted.

Learned counsel for the petitioner further submits that in December, 2020, petitioner received a telephone call from High Commission of India, and came to know about pendency of FIR No. 352, dated 24.09.2004, qua him. Thereafter on inquiry, it also came to the knowledge of petitioner that in the said criminal proceedings, trial Court had passed an order dated 03.11.2009 (Annexure P-6), vide which he has been declared as proclaimed offender. Now, after a gap of about 12 years, impugned FIR No. 584, dated 01.10.2021, under Section 174-A IPC, has been registered at Karnal Civil Lines, District Karnal, against the petitioner.

Learned counsel for the petitioner argues that initial order dated 03.11.2009 (Annexure P-6), declaring the petitioner as proclaimed offender is against settled provisions of law, inasmuch as, instead of 30 days, only 14 days time was given to appear before Court after order of proclamation. Learned counsel further submits that no time and place of publication is mentioned in the notice, which shows that, in fact, no such proceedings were conducted by the concerned agency.

Lastly, learned counsel for the petitioner submits that if one chance is granted, petitioner wants to come back to India to join the proceedings and to take legal recourse, in accordance with law”.

2. Learned counsel for the petitioner *inter alia*, further argued that in the present case, when the proclamation under Section 82 Cr.P.C. was issued, the petitioner was not in the country and the

proclamation was done in his native village intentionally and knowing fully well that he was already abroad. Apart from that, the mandatory period of 30 days was not granted to the petitioner and the petitioner was given 14 days time for appearance before the trial Court from the date of publication of the proclamation and this was against the statutory provisions of Section 82 Cr.P.C. Apart from that, it was mandatory to publicly read the proclamation in some conspicuous place of the town or the village in which the person ordinarily resides. In the present case, neither the proclamation was read publicly in some conspicuous place of village of the petitioner.

3. Still further, the FIR (Annexure P-1) had been registered in the present case after 12 years of commission of offence as the petitioner was declared proclaimed offender on 03.11.2009 whereas the FIR was registered on 01.10.2021 and the FIR was hopelessly time barred.

4. On the other hand, learned State counsel has vehemently opposed the submissions made by the petitioner on the ground that the proper procedure was followed by the police, before declaring the petitioner as a proclaimed offender. He further contends that the petitioner appeared before the trial Court intentionally and the present petition deserves to be dismissed by this Court.

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

6. This Court has held in the matter of ***Prit Pal Singh Vs. State of Punjab and others***, 2020(2) AICLR 61 as follows:-

“4. This Court in Ashok Kumar Vs. State of Haryana 2013(4) R.C.R. (Criminal) 550 while interpreting the provisions of Section 82(1) has held that a clear period of 30 days is required to be furnished to the accused and that even in case the Court subsequently adjourned the matter such adjournment beyond 30 days cannot be treated as compliance of provisions of Section 82(1) Cr.P.C. The relevant extract from the cited judgment reads as follows:

“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. A perusal of the statement of serving official (Annexure P-11) shows that the proclamation was effected on 6.8.2009. Subsequently, it appears that the matter was adjourned and the petitioner was declared a proclaimed offender vide impugned order dated 8.9.2009. It is apparent that after the proclamation was effected on 6.8.2009, the petitioner was not afforded a clear period of 30 days to cause his appearance, as he was required to cause appearance on 28.8.2009.

Adjourning the matter thereafter would not cure the aforesaid defect.

*6. Bearing the aforesaid facts in mind and also in view of the law laid down in **Ashok Kumar Vs. State of Haryana 2013(4) R.C.R. (Criminal) 550**, the petition is accepted and the impugned order dated 8.9.2009 is hereby set aside”.*

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 the order dated 12.08.2009, the proclamation of the accused was ordered to be issued for 29.09.2009, however, from the statement of the serving constable Shreepal, it is evident that the proclamation was published on 15.09.2009 i.e 14 days prior to the date of appearance fixed before the trial Court and the statutory notice of 30 days was not granted to the petitioner and since the period was less than 30 days, the case was adjourned to 03.11.2009. However, the adjournment to 03.11.2009, 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 Prit Pal 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. In the present case, the FIR was on 24.09.2004 under Sections 124-A, 153, 153-A, 167, 177, 199, 200, 500, 501, 420 and 120-B IPC; Section 3-22-1922 of PID Act; Section 4-33 of PFRR Act, 1966 and Sections 13-15 of PRB Act, 1867 at Police Station Civil Lines, Karnal. Still further, the matter had remained pending before the Trial Court. Thus, it is evident that no purpose would be served by sending the petitioner behind the bars after such a long period.

10. In view of the above discussion, it is apparent that the petitioner has been declared as proclaimed offender by completely overlooking the mandatory provisions of Section 82 Cr.P.C. Consequently, the impugned FIR 0584 dated 01.10.2021 under Section 174-A, Police Station Karnal Civil (Annexure P-1), impugned order dated 03.11.2009 (Annexure P-6) passed by the Judicial Magistrate Karnal and all consequent proceedings are liable to be quashed.

12. The impugned FIR 0584 dated 01.10.2021 under Section 174-A, Police Station Karnal Civil (Annexure P-1), impugned order

dated 03.11.2009 (Annexure P-6) passed by the Judicial Magistrate 1st Class, Karnal and all consequent proceedings are ordered to be quashed and petitioner is permitted to surrender before the learned trial Court/Area Magistrate/Duty Magistrate within a period of eight 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 eight weeks from today, the present petition shall be deemed to be dismissed by this Court.

13. The petition is disposed off in above terms.

09.08.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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