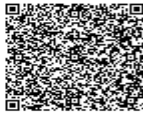


2024:PHHC:119099



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

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**CRM M-40303 of 2024
Date of Decision: 10.09.2024**

Kapoor Singh Ahlawat and others ...Petitioners
Versus
M/s Amar Steel and another ... Respondents

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

Present : Mr. Dinesh Arora, Advocate
for the petitioners.

Mr. N.K. Malhotra, Advocate,
for respondent No. 1.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioners have filed the present petition under Section 482 Cr.P.C. with a prayer to quash the order dated 27.07.2023 (Annexure P-12) passed by the Judicial Magistrate 1st Class, Rohtak, whereby, the petitioners have been declared proclaimed persons in a criminal complaint No. NACT-670 dated 28.05.2019 under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') and all consequential proceedings arising therefrom.
2. Learned counsel for the petitioners contends that a complaint dated 27.05.2019 (Annexure P-3) was filed against the petitioners by respondent No. 1 on account of dishonour of a cheque

(Annexure P-4). He further contends that after the preliminary evidence, vide the summoning order dated 04.01.2020 (Annexure P-5), the petitioners were summoned to face the trial under Section 138 of the Act. Even, the summons were never served on the present petitioners. Still further, the warrants were issued for the service of the petitioners, however, on 09.12.2021, the warrants were served on a person Lalit Kumar, who was working in the office of the company. Ultimately, in order dated 29.03.2023, the trial Court specifically recorded that nonailable warrants were not received back in any form and instead of issuing fresh warrants, the proclamation was issued against the petitioners on 29.03.2023. Again on 27.07.2023, the report on proclamation was submitted before the Court and the statement (Annexure P-11) of executing constable was also recorded by the trial Court. However, vide the impugned order dated 27.07.2023 (Annexure P-12), the petitioners were declared as a proclaimed persons in the main case.

3. Learned counsel for the petitioners contends that from the report submitted by the serving police officers, it stands established that the proclamation was not read publicly on a conspicuous place, where the accused was ordinarily residing. Thus, without following the mandatory provisions of Section 82 Cr.P.C., the petitioners have been declared to be proclaimed persons.

4. On the other hand, learned State counsel assisted by learned counsel for the complainant have vehemently opposed the submissions made by learned counsel for the petitioners on the ground that the petitioners had absconded and were declared as proclaimed persons in the present case. Thus, the impugned order does not suffer from any illegality and the petition may be dismissed.

5. Section 82 of the Cr.P.C., which provides for publication of proclamation against person absconding, reads as under:-

“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.

(2) The proclamation shall be published as follows:—

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house; (ii) the Court may also, if it

thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day. (4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under subsection (1).”

6. In a judgment titled as **Sonu Vs. State of Haryana, 2021(1) RCR (Criminal) 319**, this Court had discussed the essential requirements of Section 82 of the Code of the Criminal Procedure as under:-

9. The essential requirements of Section 82 of the Cr.P.C. for issuance and publication of proclamation

against an absconder and declaring him as proclaimed person/offender may be summarized as under:-

(i) Prior issuance of warrant of arrest by the Court is sine qua non for issuance and publication of the proclamation and the Court has to first issue warrant of arrest against the person concerned. (See Rohit Kumar Vs. State of Delhi : 2008 Crl. J. 2561).

(ii) There must be a report before the Court that the person against whom warrant was issued had absconded or had been concealing himself so that the warrant of arrest could not be executed against him. However, the Court is not bound to take evidence in this regard before issuing a Proclamation under Section 82 (1) of the Cr.P.C.. (See Rohit Kumar Vs. State of Delhi : 2008 Crl. J. 2561).

(iii) The Court cannot issue the Proclamation as a matter of course because the Police is asking for it. The Court must be prima facie satisfied that the person has absconded or is concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence. (See Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366 and Devender Singh Negi Vs. State of U.P. : 1994 Crl LJ (Allahabad HC) 1783).

(iv) The requisite date and place for appearance must be specified in the proclamation requiring such person to appear on such date at the specified place. Such date must not be less than 30 clear days from the date of issuance and publication of the proclamation. (See Gurappa Gugal and others Vs. State of Mysore : 1969

CriLJ 826 and Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339).

(V) Where the period between issuance and publication of the proclamation and the specified date of hearing is less than thirty days, the accused cannot be declared a proclaimed person/offender and the proclamation has to be issued and published again. (See Dilbagh Singh Vs. State of Punjab (P&H) : 2015 (8) R.C.R. (criminal) 166 and Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550)

(vi) The Proclamation has to be published in the manner laid down in Section 82 (2) of the Cr.P.C.. For publication the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house. The three sub-clauses (a)- (c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. (See Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368). Where the Court so orders a copy of the proclamation has to be additionally published in a daily newspaper circulating in the place in which the accused ordinarily resides. Advisably, proclamation has to be issued with four copies so that one each of the

three copies of the proclamation may be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides, to some conspicuous place of such town or village and to some conspicuous part of the Courthouse and report regarding publication may be made on the fourth copy of the proclamation. Additional copy will be required where the proclamation is also required to be published in the newspaper.

*(vii) Statement of the serving officer has to be recorded by the Court as to the date and mode of publication of the proclamation. (See **Birad Dan Vs. State : 1958 CriLJ 965**).*

*(viii) The Court issuing the proclamation has to make a statement in writing in its order that the proclamation was duly published on a specified day in a manner specified in Section 82(2)(i) of the Cr.P.C.. Such statement in writing by the Court is declared to be conclusive evidence that the requirements of Section 82 have been complied with and that the proclamation was published on such day. (See **Birad Dan Vs. State : 1958 CriLJ 965**).*

*(xi) The conditions specified in Section 82(2) of the Cr.P.C. for the publication of a Proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the Proclamation and proceedings subsequent thereto a nullity. (See **Devendra Singh Negi alias Debu Vs. State of U.P. and another : 1994 CriLJ 1783 and Pal Singh Vs. The State : 1955 CriLJ 318**)".*

7. Now adverting to the facts of the present case, it is apparent from the order dated 29.03.2023 (Annexure P-10) passed by the Court of Judicial Magistrate 1st Class, Rohtak, that the Court had ordered to secure the presence of the petitioners by way of proclamation and the proclamation under Section 82 Cr.P.C. was issued for 27.07.2023. Even, the proclamation was directed to be published, fulfilling the following requirements:-

- “1. It shall be publicly read in some conspicuous place.*
- 2. It shall be affixed in some conspicuous part of the house in which such person ordinarily resides or to some conspicuous place of the village or town.*
- 3. Copy of proclamation shall also be affixed on conspicuous part of the Court-house”.*

8. On 27.07.2023, the statement of S.P.O. Priyank, Police Station Urban Estate Rohtak was recorded and he had stated that he had visited the house of the petitioners on 27.06.2023 with proclamation. However, the petitioners were not found present in their house and he had pasted a copy of the proclamation on the given address and second copy on the conspicuous place and the third copy had been pasted on the notice board of the Court. However, he has nowhere stated that the proclamation was publicly read in some conspicuous place, where the accused ordinarily resides. Thus, the procedure as prescribed by the provisions of Section 82 Cr.P.C., had

not been followed by the serving official and the petitioners were wrongly declared as proclaimed persons in the present case.

10. In view of the above discussion, the petition is allowed and the impugned order dated 27.07.2023 (Annexure P-12) passed by the Judicial Magistrate 1st Class, Rohtak and all subsequent proceedings arising therefrom are ordered to be quashed qua the petitioners.

10.09.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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