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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-44192-2024 (O&M)

Date of Decision:04.11.2024

Sandeep Singh

...Petitioner

Vs.

State of Punjab

...Respondent

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

Present: Mr. Ramandeep Advocate with
Mr. G.S Jagpal, Advocate
for the applicant-petitioner.

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

N.S.Shekhawat J.**CRM-42264-2024**

1. Application is allowed as prayed for, subject to just all exceptions.
2. Annexure P-14 is taken on record.

Main case

1. The petitioner has filed the present petition under Section 528 of B.N.S.S with a prayer to quash the impugned order dated 16.01.2024 (Annexure P-11) passed by the Court of Judicial Magistrate Ist Class, Batala, whereby the petitioner was declared as a proclaimed offender in a case arising out of FIR No. 127, dated 24.06.2021, under Sections 307, 324, 323, 452, 506, 148, 149 of IPC and under Sections 25/27 of Arms Act, registered at Police Station Civil Lines, Batala, District Gurdaspur.
2. Learned counsel for the petitioner contends that the FIR (Annexure P-1) was registered against the petitioner on 24.06.2021. Prior to registration of the FIR, the petitioner was studying in Kings Institute of Management and



Technology in Australia since 15.04.2019. On 20.05.2021, the petitioner came back to India on account of death of his mother and due to party faction in the village, he was falsely involved in the present case on 24.06.2021. The petitioner applied for grant of concession of anticipatory bail and vide order dated 02.11.2021 (Annexure P-4), the petitioner was granted the concession of anticipatory bail by the Court of Additional Sessions Judge, Gurdaspur. After the grant of bail, the dispute was resolved between both the parties and they had compromised the matter. The petitioner also filed a petition for quashing of FIR on the basis of compromise, however, the same was withdrawn from this Court in view of the ratio of law laid down by the Hon'ble Supreme Court in the matter of "*State of Madhya Pradesh Vs. Laxmi Narayan and others*", 2019(5) SCC,588. The petitioner was under the bona fide impression that the matter has already been compromised and a petition on the basis of the compromise had already been filed before this Court. Thereafter, the petitioner went to Australia to pursue his further studies. However, after completion of his course, he returned back to India and came to know that the petitioner had been declared as proclaimed offender in present case on 16.01.2024. Learned counsel further contends that vide order dated 02.11.2021 (Annexure P-4), the petitioner was granted the concession of anticipatory bail. Thereafter, the warrants were issued against the petitioner, but the petitioner was not in India. Hence, non-bailable warrants were ordered to be issued against him. Vide order dated 07.12.2023 (Annexure P-9), the Court of Judicial Magistrate Ist Class, ordered the publication of proclamation under Section 82 of Cr.P.C. against the present petitioner and the case was adjourned to 16.12.2023. On 16.12.2023, the proclamation issued against the petitioner was received back duly unserved.



However, as per the statement of serving constable, the period of 30 days had not elapsed. Consequently, the case was adjourned to 16.01.2024 for awaiting the appearance of the petitioner. However, on 16.01.2024, by completely overlooking the mandatory provisions of Section 82 of Cr.P.C., the petitioner was declared as a proclaimed offender.

3. A short reply by way of an affidavit of Deputy Superintendent of Police, Headquarters, Batala with the additional charge of Sub-Division City, Batala has been filed on behalf of respondent-State and the same is taken on record.

4. On the other hand, learned State counsel has 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.

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 offendder 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. In fact, vide order dated 07.12.2023 (Annexure P-9), the petitioner was ordered to be served through proclamation under Section 82 Cr.P.C. for 16.12.2023. On 16.12.2023, the statutory period of 30 days had not elapsed and the case was adjourned to 16.01.2024 for awaiting the appearance of the petitioner. However, the adjournment to 16.01.2024, 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. Since, the matter has remained pending for the last several years and also the fact that the petitioner was earlier granted the concession of anticipatory bail, no purpose would be served by sending the petitioner behind the bars, after such a long period. Even otherwise, rest of the accused in the present case has already been acquitted by the Trial Court.

9. Thus, in view of the above discussion, the impugned order dated 16.01.2024 (Annexure P-11) passed by the Court of Judicial Magistrate Ist Class, Batala is illegal and unsustainable and is liable to be quashed by this Court.

10. 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.

11. The petition is disposed off in above terms.

(N.S.SHEKHAWAT)
JUDGE

04.11.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No