



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

CRM-M-45701-2024
Date of Decision:04.11.2024

Gagandeep Singh

...Petitioner

Vs.

State of Punjab

...Respondent

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

Present: Mr. B.S. Aulakh, Advocate
for the petitioner.

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

N.S.Shekhawat J.

1. The petitioner has filed the second petition under Section 482 of Cr.P.C with a prayer to quash the impugned order dated 27.02.2024 (Annexure P-8) passed by the Court of Sub-Divisional Judicial Magistrate, Malout, whereby the petitioner was declared as a proclaimed person in a case arising out of FIR No. 305, dated 10.11.2020, under Sections 13-A,3,67 of the Punjab Gambling Act, registered at Police Station City Malout, District Sri Muktsar Sahib (Annexure P-1).

2. Learned counsel for the petitioner contends that the petitioner was also involved in the FIR (Annexure P-1), which was got registered by the complainant on 10.11.2020. The mental health of the petitioner was not good and he left home without informing anyone. Consequently, he could not appear before the Trial Court on 05.12.2022, 24.04.2023, 24.08.2023 and 04.12.2023.

Due to non-appearance of the petitioner, the bail of the petitioner cancelled and



his bail bonds/surety bonds were ordered to be forfeited to the State. Vide order dated 04.12.2023, the proclamation under Section 82 Cr.P.C. was issued against the petitioner for 27.02.2024. On 27.02.2024, Rajinder Kumar, Serving Constable appeared before the Court of Sub-Divisional Judicial Magistrate, Malout and stated as under:-

“Stated that on 19.01.2024, I went to Kingra Road Village Abul Khurana in which accused Gagandeep Singh son of Kashmir Singh in regard with the proclamation issued against him served through his father. So, I affixed one copy of proclmation on the main gate of the shop and one copy of affixed by me at the common place in the (Sath) and one copy on the notice of the Court. Copy of proclamation is Mark A and report Mark-B.”

3. Learned counsel for the petitioner further contends that the petitioner was never served and no efforts were made by the prosecution to served the petitioner personally. Apart from that, the proclamation issued against the petitioner was never read over in the public place as contemplated under Section 82 (2) (i) (a) of Cr.P.C. He further contends that in view of the violation of mandatory provisions of Section 82 Cr.P.C, the impugned order is illegal and unsustainable.

4. A reply by way of an affidavit of Deputy Superintendent of Police, Sub Division Malout, District Sri Muktsar Sahib has been filed on behalf of respondent-State and the same is taken on record.

5. 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.

6. Section 82 of the Cr.P.C., 1973 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).”

7. It has been held by this Court in the matter of **Sonu Vs. State of Haryana 2021 (1) RCR (Criminal)319 as follows:-**

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 CrI. 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 CrI. 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 CrI 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**).*

*(ix) 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**).*

8. In the present case also, the proclamation was not published as per the mandatory provisions of Section 82 Cr.P.C. As per Section 82 Cr.P.C., the proclamation has to be read publically read in some conspicuous place of the



town or village in which such person ordinarily resides. In the present case admittedly, Rajinder Kumar, Serving Constable clearly admitted that he had affixed one copy of the proclamation on the main gate of the shop, one copy at the common place and one copy of the notice was affixed on the notice board of the Court. However, nowhere, he stated that he had publically read proclamation in some conspicuous place of the village, where, the petitioner ordinarily resided.

9. Thus, in view of the above discussion, the impugned order 27.02.2024 (Annexure P-8) passed by the Court of Sub-Divisional Judicial Magistrate, Malout is illegal and unsustainable and is liable to be quashed by this Court.

10. Since, the matter remained pending before the Trial Court for the last several years, no purpose will be served by sending the petitioner behind the bars after such a long period. 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.

04.11.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

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