

2024 PHHC: 106089



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

228

CRM M-46830 of 2023
Date of Decision: 09.08.2024

Sandeep Kaur ...Petitioner
Versus
State of Punjab ... Respondent

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

Present : Mr. G.S.Thind, Advocate, for the petitioner.
Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the impugned order dated 16.12.2022 (Annexure P-2) passed by the Additional Chief Judicial Magistrate, Patiala, whereby, the petitioner has been declared as proclaimed offender in a case arising out of the FIR No. 0083 dated 03.06.2018 under Sections 406, 419, 420 and 201 IPC registered at Police Station Urban Estate, Patiala (Annexure P-1).
2. Learned counsel for the petitioner contends that a false case FIR No. 0083 dated 03.06.2018 under Sections 406, 419, 420 and 201 IPC at Police Station Urban Estate, Patiala (Annexure P-1) was ordered to be registered against the petitioner. He further contends that after the grant of bail, the petitioner was regularly appearing before the trial Court. However, due to

inadvertent mistake in noting down the date of hearing, the petitioner could not appear on 17.05.2022 and as a result of the same, her bail was ordered to be cancelled and the bail bonds/surety bonds were ordered to be forfeited to the State and the petitioner was ordered to be served through non-bailable warrants for 24.08.2022. Thereafter, on 25.08.2022, the proclamation under Section 82 Cr.P.C. was ordered to be issued against the petitioner and the case was adjourned to 04.11.2022. On 04.11.2022, the proclamation issued against the petitioner was received back duly effected and the statement of HC Rahul Kumar, serving official was recorded by the Court. In his statement (Annexure P-9), HC Rahul Kumar stated that he had gone to the address of the accused on 03.11.2022 and affixed one copy of proclamation warrant at the door of the house and the second copy of the proclamation warrant was affixed at a public place and the third one was affixed on the notice board of the Court. The statement of HC Rahul Kumar has been reproduced below:-

" Statement of HC Rahul Kumar, No.963/ Patiala, P.S.Urban Estate Patiala.

Proclamation warrant of accused Sandeep Kaur wife of Baljinder Singh, Resident of House No.37, Green Avenue Basti, Peere Daad Basti Bawa Khel, Jalandhar was entrusted to me for its execution. I went to the address of above said accused on 3.11.2022 and affixed one copy of proclamation warrant at the door of their house and the second copy of proclamation warrant was affixed at public place, the third one was affixed on the notice

board of court. Proclamation warrant of accused is Ex.PA and my report is Ex.PB”.

3. Since the proclamation was published on 03.11.2022, i.e., one day prior to the date of hearing fixed before the trial Court for appearance of the accused, it was apparent that a notice of 30 days from the date of publishing such proclamation was not given to the petitioner. Since, the period of 30 days had not elapsed, on 04.11.2022, the trial Court adjourned the case to 16.12.2022 for awaiting the presence of the petitioner. Learned counsel further contends that adjourning the matter for a period of more than 30 days for the appearance of the accused before the Court was not sufficient compliance of the mandatory provisions of Section 82 Cr.P.C. Apart from that, the Court had failed to appreciate that the proclamation was not read in some conspicuous place in the town/village in which the accused ordinarily resided and the proclamation was not duly published.

4. On the other hand, learned State counsel has vehemently argued that the petitioner was intentionally avoiding the service of summons/warrants and did not appear before the trial Court for a long period. Thus, the impugned order is liable to be upheld by this Court.

5. This Court has held in the matter of ***Sonu Vs. State of Haryana, 2021(1) R.C.R. (Criminal) 319*** as under:-

8. 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).”

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).

(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)".

6. In the present case, vide order dated 25.08.2022, the proclamation under Section 82 Cr.P.C. against the petitioner was ordered to be issued for 04.11.2022. On 04.11.2022, the statement of HC Rahul Kumar, Serving Constable, was recorded and he stated that he had affixed the copy of the proclamation warrant on 03.11.2022 at the house of the petitioner, public place and notice board of the Court. Even, on 04.11.2022, the Court of ACJM, Patiala, also held that one month's time has not elapsed after the publication of the proclamation against the petitioner. Consequently, the case was adjourned to 16.12.2022 awaiting the presence of the petitioner. In fact, the trial Court could not extend the time by simply adjourning the case for awaiting the appearance of the petitioner and was mandatorily required to issue the proclamation against for publication thereof in accordance with the provisions of Section 82(2) Cr.P.C., as held by

this Court in the matter of *Ashok Kumar VS. State of Haryana, 2013 (4) RCR (Criminal) 550*. Apart from that, the proclamation was not read publicly in some conspicuous place in the town/village in which the accused ordinarily resided and the proclamation was not duly published. Consequently, the proclamation and subsequent proceedings were in violation of the law laid down by this Court.

7. As a sequel of the above discussion, the impugned order dated 16.12.2022 (Annexure P-2) passed the Additional Chief Judicial Magistrate, Patiala, and all subsequent proceedings arising therefrom are ordered to be quashed.

8. The petitioner is directed to surrender before the trial Court within a period of 06 weeks from the receipt of a copy of this order. Since, the petitioner was already on bail, in the present case, he shall be admitted to bail by the trial Court. In the present, the FIR was ordered to be registered against the petitioner on 03.06.2018. Consequently, the trial Court is directed to conclude the trial, expeditiously, in accordance with law.

9. The petition stands disposed off, accordingly.

09.08.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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