



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49208-2022 &
CRM-M-46872-2022
DECIDED ON: 24.07.2024

PRATYAKSH MINOCHA

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashish Aggarwal, Advocate
for the petitioner.

Mr. B.S. Virk, Sr. DAG, Haryana

Mr. Manish Dhankar, Advocate for
Mr. Punit Malik, Advocate
for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. By this common order, this Court intends to dispose of the above two petitions as the same question of law is involved therein.
2. The jurisdiction of this Court has been invoked under Section 482 of the Code of Criminal Procedure seeking quashing of FIR No. 498 dated 05.08.2021 under Section 174-A of IPC, 1860 registered at Police Station Shivaji Nagar, District Gurugram (Annexure P-10) and all the subsequent proceedings arising out thereof from the order dated 02.08.2021 passed by the court of Learned Judicial Magistrate First Class, Gurugram (Annexure P-9), whereby the petitioner has been declared as "Proclaimed Person" in an illegal and arbitrary manner without adopting the proper procedure of law in case bearing FIR No. 19 dated 25.01.2020 under

Sections 306, 34, 452, 506 Indian Penal Code, 1860 registered at Police Station Gurgaon City, District Gurugram.

3. Reply by way of an affidavit of Surender Singh, H.P.S., Assistant Commissioner of Police, City Gurugram has been filed on behalf of respondent No.1 i.e. State of Haryana, which is taken on record. Copy thereof has been supplied to the learned counsel for the petitioner today in Court.

4. Learned counsel for the petitioner drew attention of this Court to an order dated 26.09.2022 whereby the petitioner was directed to surrender before the trial Court with an interim direction that proceeding in FIR No.498, dated 05.08.2021, under Section 174-A IPC was ordered to be stayed with no coercive steps to be taken against the petitioner.

5. He has informed the Court that petitioner has surrendered before the trial Court as per direction dated 26.09.2022 and since then she is associating before the trial proceedings which are still pending at the stage of appearance of the petitioner-accused.

6. In the instant petition, order dated 02.08.2021 passed by Judicial Magistrate Ist Class, Gurugram (Annexure P-9) has also been assailed vide which the petitioner was declared proclaimed person to which argument has been raised that statutory period of 30 days as enshrined under Section 82 Cr.P.C. has not been adhered to and to substantiate his argument, proceedings were initiated on 29.01.2021 to put in appearance for 27.04.2021. The proclamation was published on 24.04.2021 just three days prior in time fixed for an appearance and the case was further adjourned to 10.06.2021.

7. Heard learned counsel for the parties.
8. Before proceeding further, it would be apposite to reproduce the relevant section hereinbelow:-

“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).

10. This Court in **CRM-M-15619-2021 titled as Manpreet Singh vs. State of Punjab decided on 08.04.2021**, while relying upon the judgment of this Court in **Ashok Kumar Vs. State of Haryana and another, 2013 (4) RCR (Criminal) 550** has held that the proclamation has to be issued by giving mandatory period of 30 days from the date of publication of the proclamation till the next date of hearing of the case, in the present case, the same has not been done. For reference, para 4 of Ashok Kumar's case (supra) being relevant is reproduced hereunder:-

“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.”

11. In the present case, admittedly, the publication was made on 24.04.2021 (Annexure P-7) for seeking appearance of the accused-petitioner in the instant complaint case on 27.04.2021 (Annexure P-7). In support thereof, learned counsel for the petitioner has referred to order dated 03.02.2021 (Annexure P-5) whereby it has been directed as under by JMJC, Gurugram.

“WHEREAS complaint/case has been made before me that MINU MINOCHA W/O HARBANS LAL R/O H.NO.201, IIND FLOOR, SEC 9, GGM has committed (or is suspected to have committed) the offence punishable under Section 306/452/506 IPC, and it has been returned to a warrant of arrest thereupon issued that the said MINU MINOCHA W/O HARBANS LAL cannot be found, and whereas it has been shown to my satisfaction that the said warrant); Proclamation is hereby made that the said MINU MINOCHA W/O HARBANS LAL is required to appear before this Court (or before me) to answer the said complaint case on 27.04.2021.”

12. A perusal of the above would clearly indicate that 30 days period has not been adhered to and merely in just 2 days time after affixation of proclamation on 24.04.2021, presence of the petitioner has been sought on 27.04.2021, which in itself is a complete grave error in calculating 30

days period from the date of passing of order dated 03.02.2021 (Annexure P-5) and the same is totally against the spirit of Section 82 Cr.P.C. and subsequently as has been held by the various judicial pronouncements.

13. In the light of order dated 14.10.2022 passed in CRM-M-46872-2022, this Court has been informed that it has been duly followed as the petitioner has joined investigation on 02.11.2022 and since then he is appearing on each and every date without any delay before the trial Court.

14. In the meantime, the petitioner shall join the investigation in FIR No.19, dated 25.01.2020, under Sections 306, 34, 452 IPC, registered at Police Station City Gurugram, District Gurugram without any default thereafter.

15. In the light of above discussions made hereinabove, this Court is duly convinced, after hearing the submissions as well as perusal of the record that the 30 days' period has been wrongly calculated and assessed by the trial Court and, therefore, the order dated 02.08.2021 (Annexure P-9), whereby the petitioner has been declared as "Proclaimed Person" is bad and not sustainable in the eyes of law and consequently, FIR No. 498 dated 05.08.2021 under Section 174-A of IPC, 1860 registered at Police Station Shivaji Nagar, District Gurugram (Annexure P-10), which was registered in pursuance of the PO order, are hereby quashed qua the petitioner.

16. The instant petitions are allowed in the aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

24.07.2024
Poonam Negi

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No