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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45266-2024
DECIDED ON: 20.11.2024

RANJIT KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 528 of BNSS, 2023 for quashing of impugned order dated 28.03.2024 (Annexure P-8) passed by learned Judicial Magistrate Ist Class, Patiala in FIR No.75 dated 29.03.2019, under Sections 120-B, 419, 420 IPC, registered at Police Station Civil Lines Patiala, District Patiala, whereby the petitioner was declared proclaimed person and FIR under Section 174-A of IPC was directed to be initiated against him.
2. Learned counsel for the petitioner contends that the order dated 28.03.2024 (Annexure P-8), vide which the petitioner was declared proclaimed person suffers from material illegality, since mandatory period of 30 days has not been rightly calculated by the trial Court in utter violation to the mandate laid down under Section 82 of Cr.P.C.
3. On the other hand, learned State counsel submits that there is no illegality in the order passed by the trial Court below and the petitioner has been

rightly declared as proclaimed person as he was evading the process of law and a person who has no respect for the process of law, deserves no relief from the Court.

5. Before proceeding further, it would be apposite to reproduce the relevant Section below:-

“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. 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).

7. Coming back to the present case in hand, the order dated 28.03.2024 (Annexure P-8) suffers from discrepancies as before declaring the petitioner as proclaimed person neither the date was specified on which the petitioner was to appear in the Court nor it was read in some conspicuous place of the town or village in which the petitioner ordinarily resided and also added with the fact the petitioner was regularly appearing before the trial Court on each and every date gives a handle to this Court that he had no deliberate intention to evade the process of law. Further the order dated 28.03.2024 (Annexure P-8) does not contain a statement by the Court to the effect that the proclamation was duly published on specified day and in the manner specified in Clause (i) of Sub-Section (2). Therefore, this Court is of the view that trial Court below while passing the impugned order has not taken into consideration the relevant requirements for declaring the petitioner as proclaimed person.

8. 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 petitioner has wrongly been declared as proclaimed person in sheer violation of

Section 82 Cr.P.C and, therefore, the order dated 28.03.2024 (Annexure P-8) is bad and not sustainable in the eyes of law. Hence, the same is ordered to be quashed.

9. The present petition stands allowed.

20.11.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>