



In the High Court for the States of Punjab and Haryana
At Chandigarh

CRM-M-46688-2024 (O&M)
Date of Decision:-11.12.2024

Abhay Kumar ... Petitioner
Versus
State of Punjab and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Angrej Singh Sarwara, Advocate,
for the petitioner.
Mr. Japjot Singh, AAG, Punjab.
Mr. Bhisham Kinger, Advocate for respondent No.2.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking setting aside of order dated 9.6.2022 passed by learned Sub Divisional Judicial Magistrate, Nakodar (Annexure P-2) in FIR No.25, dated 17.3.2020 registered at Police Station City Nakodar, District Jalandhar Rural, under Sections 324, 323, 427, 506, 148, 149 of Indian Penal Code, wherein offence under Section 435 IPC was added later on, whereby the petitioner has been declared a proclaimed offender.
2. At the time of issuance of notice of motion, the following order was passed on 20.9.2024:

“The petitioner assails order dated 9.6.2022 (Annexure P-2)
passed by learned Sub Divisional Judicial Magistrate,



Nakodar vide which he has been declared a proclaimed person.

Learned counsel for the petitioner submitted that in the instant case the mandatory provisions of Section 82 Cr.P.C. have not been complied with in letter and spirit inasmuch a clear period of 30 days with effect from the date when proclamation was actually effected i.e. on 5.5.2022 upto the date nominated for causing appearance i.e. on 2.6.2022 was not afforded to the petitioner. It has been submitted that the Trial Court upon finding that the requisite period of 30 days has not expired had further adjourned the matter vide order dated 2.6.2022, but such like adjournment could not have cured the defect which had crept in.

Learned counsel, in order to hammer forth his aforesaid submission, places reliance upon Ashok Kumar Vs. State of Haryana 2013(4) R.C.R. (Criminal) 550 and a recent judgment dated 16.7.2021 of this Court rendered in CRM-M-25088 of 2021 titled Anita Sharma Vs. State of Punjab.

Learned counsel for the petitioner further submitted that, in any case, the entire process is also defective inasmuch once it had come to the knowledge of the Court that the petitioner was not residing in India and was abroad, then provisions of Section 105 Cr.P.C. ought to have been resorted to.

Notice of motion for 11.12.2024.

At this stage, Mr. Bhisham Kinger, Advocate has put in appearance on behalf of respondent No.2 and has filed *Vakalatnama*, which is taken on record.

Meanwhile, the operation of impugned order shall be kept in abeyance.”

3. Despite issuance of notice of motion, no reply has been filed on behalf of the State. The learned State counsel could not dispute the legal position spelt



forth in Ashok Kumar’s case (supra) and in Anita Sharma’s case (supra). The facts as noticed in order dated 2.9.2024 clearly reflect that mandatory provisions of Section 82 Cr.P.C. have not been complied with in letter and spirit inasmuch it is only a period of 28 days which was afforded to the petitioner for causing appearance on nominated date i.e. 2.6.2022. As such, in light of ratio of Ashok Kumar’s case (supra) and Anita Sharma’s case (supra), the petition is accepted and the impugned order dated 9.6.2022 passed by learned Sub Divisional Judicial Magistrate, Nakodar (Annexure P-2) is hereby set aside.

4. The petition stands disposed off accordingly.

11.12.2024
Pankaj

(Gurvinder Singh Gill)
Judge

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