

CRM-M-48882-2023

1
2023:PHHC:166380

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

CRM-M-48882-2023
Date of decision : 06.02.2024

AMRIK SINGH

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sunny K. Singla, Advocate
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Present petition has been filed under Section 482 Cr.P.C. seeking quashing of complaint bearing No.COMI/186/2014 dated 13th of June, 2014 titled as “**Amrik Singh vs. Hardev Singh and others**” filed under Sections 409, 420, 467, 468, 471, 379, 120-B of the Indian Penal Code, 1860, at Police Station Ahmedgarh along with summoning order dated 31st of March, 2018 and that order dated 5th of July, 2018 passed by JMIC, Malerkotla whereby the petitioner has been declared as a Proclaimed Person.

2. Counsel for the petitioner submits that declaration of the petitioner as a Proclaimed Person is in the teeth of mandatory provision of Section 82 of the Code as the publication was pasted on the door of the house of the petitioner despite the fact that it was already in the records

before the Court that the petitioner is residing abroad. He further submits that the proclamation was published on 30th of May, 2018 and the petitioner was required to appear on 31st of May, 2018 thus the mandatory period of 30 days has not been complied with.

3. While issuing notice of motion on 19th of October, 2023, this Court ordered as under :

“Petitioner herein is praying for quashing of complaint bearing No.COMI/186/2014 dated 13th of June, 2014 titled as '**Amrik Singh vs. Hardev Singh and others**' filed under Sections 409, 420, 467, 468, 471, 379, 120-B IPC of Police Station Ahmedgarh and all consequential proceedings arising therefrom including order dated 5th of July, 2018 passed by JMIC, Malerkotla whereby the petitioner has been declared as Proclaimed Person.

Counsel for the petitioner *inter alia* submits that the petitioner was declared as Proclaimed Person in violation of the mandatory provision of Section 82 Cr.P.C. as mandatory requirement of 30 days between the date of publication and the order of declaring Proclaimed Person was not resorted to. Publication was pasted on the door of the house of the petitioner despite the fact that it came to the knowledge that he is residing abroad, on 30th of May, 2018 and he was required to appear on 31st of May, 2018. Reference is being made to Annexures P-4 and P-6.

Counsel further submits that so far as the trial *qua* other accused is concerned, the same has culminated in discharge of the accused after the complainant failed to appear to get his statement recorded.

Issue notice of motion returnable for 6th of February, 2024.

Mr. Tarun Aggarwal, Sr. DAG, Punjab appears and accepts notice on behalf of respondent No.1-State of Punjab.

In the meantime, operation of the impugned order dated 5th of July, 2018 declaring the petitioner as Proclaimed Person shall be kept in abeyance subject to the petitioner appearing before the Trial Court on or before 29th of January, 2024.”

4. Counsel for the petitioner has produced order dated 29th of January, 2024 passed by JMIC, Malerkotla which shows that the petitioner stands admitted to bail after having appeared before the concerned Court.

5. Section 82 Cr.P.C. came up for consideration before this Court in **CRM-M-56380-2022** titled as '**Chamkaur Singh vs. State of Punjab and others**', wherein it was held as under :

“7. Section 82 Cr.P.C. is part of Chapter VI of the Criminal Procedure Code that prescribes the Process to Compel Appearance. The proceedings under Part 'C' of the said Chapter are in form of last remedy with the Court for compelling attendance of an accused person or witness whose presence is required. The same entails grave consequences. Section 174-A of the Penal Code provides punishment of imprisonment which may extend to three years along with fine where a person fails to appear at the specified place and specified time as required by the proclamation published under sub-Section 1 of Section 82 of the Code. Chapter VI of the Criminal Procedure Code calls for attachment and sale of the property of the proclaimed offender. Keeping in view these serious consequences of the pronouncement under Section 82(4) Cr.P.C., the Code mandates procedure prior to such pronouncement. The same is based on fairness. Since the pronouncement is followed by civil as well as penal consequences, the procedure prior to pronouncement needs to be followed strictly.

8. Prior to invoking Section 82 Cr.P.C., the Courts must have reasons to believe that the person against whom warrant has been issued has absconded or is concealing himself with an

intent to defeat execution of such warrants. A belief can be said to be founded on 'reasonable grounds' only when there is something cogent to justify the same. The expression 'reasonable grounds' has been dealt by Supreme Court in '**Chenna Boyanna Krishna Yadav Vs. State of Maharashtra**', (2007) 1 SCC 242 to connote as under :

“13. xxxxxxxx The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provisions requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction xxx”

(emphasis supplied)

9. Thus prior to resorting to Section 82(1) the belief of the Court based upon the reasons is *sine qua non* and must be reflected from the records and order. Only on the satisfaction of the said ingredient, the Court should publish a written proclamation requiring the wanted person to appear at a specified place and at a specified time. The provision further mandates that time specified should not be less than 30 days from the date of publication of proclamation. Section 82(2)(i) prescribes following modes of publication :

- (a) It must be publicly read in some conspicuous place of the town or village where such person ordinarily resides;
- (b) The proclamation must be affixed at some conspicuous part of the house or homestead or town or village which is ordinarily place of residence of such person; and
- (c) Copy of proclamation should also be affixed at some conspicuous part of the Court.

10. Section 82(2)(ii) further prescribes that if the Court thinks

fit it may also direct copy of the proclamation to be published in a daily newspaper circulating at the place where such person ordinarily resides.

11. While all modes of publication as prescribed under Section 82(2)(i) need to be mandatorily complied with, mode of publication as prescribed under Section 82(2)(ii) i.e. publication in newspaper is subject to the opinion of the Court deeming it fit.

12. Section 82(3) further prescribes that publication of proclamation as prescribed under Section 82(2)(i) is the conclusive evidence that the requirements of the section have been complied with. It is thereafter, the Court may, after making inquiry w.r.t. compliance of the procedure as contemplated under Section 82(2) pronounce a person to be a Proclaimed Offender/Person and make a pronouncement to that effect under Section 82(4).”

6. The facts are not much in dispute in the present case.

7. As per the records of the case, publication was ordered on 19th of May, 2018 which was effected on 30th of May, 2018 requiring the petitioner to appear in terms of publication on 31st of May, 2018.

8. In view of above, this Court finds that the procedure being in teeth of the mandatory provision, declaration under Section 82 Cr.P.C. of the petitioner as a Proclaimed Offender cannot sustain and is hereby set aside.

9. Counsel for the petitioner further relies upon order dated 19th of December, 2022 to submit that the matter *qua* the other co-accused at the stage of pre-charge evidence stands closed by the Court after the complainant admitted that he has compromised the matter with the accused(s).

10. In view of above, this Court finds that relegating the petitioner to face trial at this stage would be of no consequence in view of the fact that at the stage of pre-charge evidence itself the prosecution already stands foreclosed on the basis of compromise.

11. Resultantly, the present petition is allowed. Complaint bearing No.COMI/186/2014 dated 13th of June, 2014 titled as “Amrik Singh vs. Hardev Singh and others” filed under Sections 409, 420, 467, 468, 471, 379, 120-B of the Indian Penal Code, 1860 at Police Station Ahmedgarh along with summoning order dated 31st of March, 2018 as well as order dated 5th of July, 2018 passed by JMIC, Malerkotla declaring the petitioner to be a Proclaimed Person, are hereby quashed.

February 06, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No