

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-49919-2023 (O&M)
Date of decision: 25.01.2024

Sandeep Singh Gill ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ashit Goel, Advocate
for the petitioner.

Mr. P. S. Pandher, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of FIR No. 02 dated 07.01.2011, registered under Sections 494, 495, 406 and 498-A of IPC at Police Station Maqsudan, District Jalandhar (Annexure P-1) along with all the subsequent proceedings arising therefrom as well as order dated 04.02.2012 (Annexure P-8), whereby the petitioner had been declared a proclaimed offender in the proceedings under the aforesaid FIR.
2. Brief facts relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on a written complaint submitted by complainant/respondent No. 2 Sunita alleging therein that her marriage was solemnized with the petitioner on 11.05.2009. Sufficient dowry was given in the marriage. Even in the engagement ceremony, besides spending an amount of Rs. 35,000/-, a cash amount of Rs. 11,000/- was given as *shagun* along with gold ornaments by the family of the complainant to the petitioner and his family members. However, a matrimonial discord had arisen

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between the parties. She alleged that after her marriage with the petitioner, she came to know that the petitioner was already married with one Rajwinder Kaur and he had not taken divorce from her before performing marriage with the complainant. When she raised objection to the same, the petitioner fled away to Canada on 17.05.2009 and had not returned to India since then. With these allegations, the complainant/respondent No. 2 had got registered aforementioned FIR against the petitioner/husband and his family members. After completion of the investigation and usual formalities, *challan* qua co-accused Gulzar Singh Gill and Surjit Gill was presented in Court. During the course of trial, co-accused Gulzar Singh Gill had died and co-accused Surjit Gill was acquitted by the trial Court, vide judgment dated 29.08.2018. Since the petitioner was residing in Canada, he could not appear before the trial Court, consequent to which, proceedings under Section 82 Cr.P.C. were initiated against him and he was declared a proclaimed offender, vide impugned order dated 04.02.2012.

3. By way of filing the present petition, the petitioner has made two folds prayer, i.e. quashing of the FIR in question as well as the order dated 04.02.2012, whereby, he had been declared a proclaimed offender by the trial Court. However, before addressing argument, learned counsel for the petitioner has submitted that he restricts his arguments only to the extent of quashing the impugned order dated 04.02.2012 (Annexure P-8) and claims relief only on that point.

4. Learned counsel for the petitioner has argued that while declaring the petitioner a proclaimed offender, the proper procedure as laid down under Section 82 Cr.P.C. had not been followed by the trial Court. In fact, when the

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aforesaid FIR was got registered by respondent No. 2 on 07.01.2011, the petitioner was in Canada and he was never served at his ordinary place of residence in Canada. A perusal of the contents of the FIR would itself reveal that at the time of registration of FIR, the petitioner was in Canada and he never returned to India, before passing of the impugned order declaring him a proclaimed offender. With these broad submissions, learned counsel for the petitioner has argued that the impugned order is liable to be set aside.

5. Learned State counsel has filed the status report. He has argued that the petitioner was having the knowledge about the pendency of the trial and had intentionally avoided his appearance. Therefore, he was rightly declared a proclaimed offender. Hence, it is urged that the petition is liable to be dismissed.

6. I have heard learned counsel for the parties and have also gone through the material placed on record.

7. On giving due deliberations to the contentions as raised by learned counsel for the parties and on an overall perusal of the orders passed by the trial Court from the date of initiating proceedings under Section 82 Cr.P.C. as against the petitioner till the date of declaring him a proclaimed person, I am of the considered opinion that the impugned order dated 04.02.20129 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

8. At the outset, it would be relevant to refer to the provision of Section 82 Cr.P.C., which provides for publication of proclamation against the person absconding. It reads as under:

“82. Proclamation for person absconding. –

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(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.

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(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. There are catena of judgments of different High Courts discussing the requirements necessary for issuance and publication of proclamation against an absconder under Section 82 Cr.P.C. and for declaring him as a proclaimed person/offender. These requirements have been discussed from time to time in ***Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561, Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561, Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366, Devender Singh Negi Vs. State of U.P. : 1994 CrL LJ (Allahabad HC) 1783, Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826, Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339, Dilbagh Singh Vs. State of Punjab : (P&H) 2015 (8) R.C.R. (criminal) 166, Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550, Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368, Birad Dan Vs. State : 1958 CriLJ 965, Birad Dan Vs. State : 1958 CriLJ 965, Negi alias Debu Vs. State of U.P. and another, 1994 Cri LJ 1783 and Pal Singh Vs. The State : 1955 CriLJ 318.***

10. The position of law as laid down in the above cited authorities 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.
- (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

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evidence in this regard before issuing a Proclamation under Section 82 (1) of the Cr.P.C.

(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.

(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.

(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.

(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. 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

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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.

(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.

(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.

11. On applying the above discussed position of law to the peculiar facts and circumstances of the present case, it is apparent that the trial Court had not followed the proper procedure while declaring the petitioner a proclaimed offender. A perusal of the report dated 11.11.2011 submitted by the serving police official, which has been placed on record as Annexure P-4, shows that the serving police official himself has reported that he had come to know that the petitioner had gone to Canada 'before registration of the FIR'. However, vide order dated 17.11.2011, the trial Court had fallen in grave error by ignoring the report of the serving police official, as per which the petitioner was in Canada. The trial Court had observed that the accused cannot be served through ordinary manner and ordered for issuance of proclamation for

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13.12.2011 straightaway, which was not in consonance with the settled proposition of law as 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. Thereafter, on 13.12.2011, since the proclamation issued against the petitioner was not received back, the case was adjourned to 04.02.2011, on which date, the trial Court, by observing that the proclamation was effected on 30.12.2011 and the statutory period of 30 days had elapsed and even then the petitioner had not appeared before it, declared the petitioner a proclaimed offender. However, a bare perusal of the report of the serving police official, on the basis of which the impugned order was passed by the trial Court, would show that it is nowhere mentioned as to on which date, the proclamation was executed. More so, while passing the impugned order, the trial Court had miserably failed to take into consideration the fact that the petitioner had left for Canada on 17.05.2009, i.e. even before registration of the FIR and this fact finds mention even in the FIR as well as in the report dated 11.11.2011 submitted by the serving police official. The complainant was very much aware that the petitioner was in Canada but the trial Court had not made any attempt to either ask the complainant or to give direction to contact any of the family members of the petitioner in order to know about his ordinary place of residence or to serve him there in Canada through Ministry of External Affairs. The Courts are required to ensure that personal service of summons are affected upon accused before issuance of non-bailable warrants and in case the accused is residing abroad then a valid personal service has to be effected through embassy of India located at concerned foreign country.

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Reliance in this context can be placed upon *Jagjit Singh and others vs. State of Punjab : 2022 (4) RCR (Criminal) 241*. Therefore, the impugned order dated 04.02.2012 suffers from material illegalities and is liable to be quashed.

12. Accordingly, the present petition is partly allowed and the impugned order dated 04.02.2012 (Annexure P-8), passed by the Judicial Magistrate First Class, Jalandhar, vide which the petitioner was declared a proclaimed offender in the aforesaid FIR , is hereby quashed along with all the subsequent proceedings.

13. However, the petitioner is directed to surrender before the Court concerned within a period of four weeks, subject to order for grant of anticipatory bail, if any passed on his petition to be filed under Section 438 of the Cr.P.C. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioner shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court in accordance with law.

14. Needless to observe that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall be bound to dispose of the same expeditiously and that nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

25.01.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes