

**CRM-M-47292-2024 (O&M)****1****123 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****CRM-M-47292-2024 (O&M)****Date of Decision: 20.09.2024****SHOKIN @ MOHD. SHOKEEN @ SHOUKEN****...PETITIONER****Versus****STATE OF HARYANA****...RESPONDENT****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present: Mr. Kunal Jindia, Advocate
for the petitioner.****Mr. Vikas Bhardwaj, AAG Haryana.************HARPREET SINGH BRAR J. (ORAL)**

1. The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita (hereinafter to be referred as 'BNSS') read with Section 482 of Cr.P.C. seeking quashing of the order dated 05.01.2023 (Annexure P-7) passed by learned Special Court/Additional Sessions Judge, Fast Track Court, POCSO, Palwal, vide which the petitioner has been declared as proclaimed person in case bearing FIR No. 26 dated 28.05.2021(Annexure P-1), registered under Sections 376-d, 328, 506, 201 of Indian Penal Code and Section 67 of Information Technology Act and Section 6 of Protection of Children from Sexual Offences Act, 2012 at Police Station Women Police Station, Palwal and all consequential proceedings arising therefrom.

2. Facts germane for adjudication of dispute in present case are that the learned Special Court on the application of I.O. vide order dated 19.09.2022 issued warrant of arrest of the petitioner for 01.10.2022.

3. On 01.10.2022 the warrants of arrest issued against the accused were received back unexecuted, and I.O. moved second application for issuance of

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warrant of arrest of accused again, which was issued by the learned Special Court for 26.10.2022. However, the learned Special Court adjourned the case beforehand on 21.10.2022, for 05.11.2022 on the ground that the learned presiding officer shall be on compensatory leave on 26.10.2022.

4. On 05.11.2022 learned Special Court held that the warrant of arrest of the petitioner received back unexecuted. The learned Special Court held that warrants of arrest were issued against the petitioner thrice but could not be executed. The learned Court further held that it is satisfied that the accused has either absconded and avoiding the execution of warrants or concealing his presence before the Court and cannot be served by way of warrants of arrest. The I.O. then moved application for issuance of proclamation against the accused. The learned Special Court then held that the petitioner be served through publication under Section 82 Cr.P.C. for 06.12.2022, with a direction to the accused to appear in the Court from the day of publication within the period of 30 days.

5. On 06.12.2022 the learned Court recorded that the proclamation issued against the accused already received back duly executed. Court took on record the report dated 04.12.2022 of the serving constable on record of the case and held that since mandatory period of 30 days has not lapsed, therefore, the case was adjourned to 05.01.2023 for presence of petitioner.

6. On 05.01.2023 the learned Special Court due to non-appearance of the petitioner in the Court declared him proclaimed person in the above mentioned FIR case.

7. Learned counsel for the petitioner states that the petitioner has wrongly been declared as proclaimed person in utter derogation of the provisions

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of Section 82 of the Cr.P.C. It is further contended that co-accused Ikram @ Ikramuddin was also declared as proclaimed person vide order dated 05.01.2023 (Annexure P-7) and thereafter he approached this Hon'ble Court filing CRM-M-50666-2023 seeking quashing of the proclaimed person order and a Co-ordinate Bench of this Court vide order dated 22.04.2024 (Annexure P-8) quashed the order of proclaimed person qua the aforesaid co-accused.

8. I have heard learned counsel for the petitioner and have gone through the record of the case. The learned counsel for the petitioner pointed out that first time warrant of arrest against the accused were issued vide order dated 19.09.2022. Second time the warrants of arrest were issued against him on 01.10.2022. This fact is apparent from the order dated 01.10.2022 passed by learned Special Court, wherein it is so recorded. Thereafter, the proceedings in the matter were undertaken by the learned Special Court on 05.11.2022. Therefore, it is wrongly mentioned by the learned Special Court in order dated 05.11.2022 that the warrants of arrest were issued against the petitioner thrice. Besides this while recording its satisfaction in the order dated 05.11.2022, that the accused is either absconding and avoiding the execution of warrants or concealing his presence, no objective material, on the basis of which such opinion has been formed by the learned Special Court has been recorded in the order. Both the times, the warrants of arrest issued against the petitioner remained unexecuted but the learned Court has not mentioned the reason for non-execution of warrants in its orders, so as to make it decipherable that whether the reasons for non-execution of the warrants are attributable to the petitioner or not.

9. Learned counsel for the petitioner has contended that on 06.12.2022 when the proclamation was received back executed for 06.12.2022, the period of

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30 days had not elapsed for presence of the petitioner and no proclamation was issued on 06.12.2022 rather case was adjourned to 05.01.2023, i.e. when the petitioner was declared proclaimed person.

10. Section 82 of the Cr.P.C. prescribing procedure for issuing proclamation for person absconding is as under:

“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 Sections 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 sub-Section (1).]”

11. A Coordinate Bench of this Court in case of ***Sonu versus State of Haryana, 2021(1) RCR (Criminal) 319***, while dealing with the aspect of the proclamation issued under Section 82 of Cr.P.C. after extensively discussing the law on the subject has held as under:

“9. The essential requirements of section 82 of the Cr.P.C., 1973 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 v. 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., 1973. (See Rohit Kumar v. 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 v. Emperor : AIR 1943 Patna 366 and Devender Singh Negi v. 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 v. State of Mysore : 1969 CriLJ 826 and Shokat Ali v. 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 v. State of Punjab (P&H) : 2015 (8) RCR (CRIMINAL) 166 and Ashok Kumar v. 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., 1973. 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 subclauses (a)- (c) in Section 82 (2)(i) of the Cr.P.C., 1973 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 v. 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 v. 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., 1973. 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 v. State : 1958 CriLJ 965).

(ix) The conditions specified in Section 82(2) of the Cr.P.C., 1973 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 v. State of U.P. and another : 1994 CriLJ 1783 and Pal Singh v. The State : 1955 CriLJ 318). ”

12. In view of the above discussed position of law, when the facts of the present case are evaluated, the same are found lacking the essential requirements of procedure prescribed in Section 82 of the Cr.P.C. In the present case while passing the order dated 06.12.2022 the learned Court has not recorded that the serving constable had read the publication against the petitioner publicly in some conspicuous place of the village of the petitioner. The learned Court has not recorded in its order dated 05.11.2022 that there was some report before it which made the Court believe that the petitioner had been concealing himself so that the warrant of arrest could not be executed against him. In para 9(v) of the judgment passed in **Sonu's case** (supra) it is clearly laid down that when the period between the issuance and publication of the proclamation and the specified date of hearing is less than 30 days, the proclamation has to be issued and published again. The order dated 06.12.2022 passed by the learned Special Court does not pass the said test and clearly falls short of the requirement of completion of 30 days period between the publication and date fixed in the matter. As such the learned Trial Court has faulted in law while declaring the petitioner proclaimed person vide order dated 05.01.2023, on the basis of publication issued against the petitioner on 05.11.2022 for 06.12.2022, without issuing any fresh publication on 06.12.2022.

13. In view of my above findings the present petition under Section 482 of the Cr.P.C. filed by the petitioner, seeking quashing of order dated 05.01.2023 passed by the learned Special Court/ASJ (Fast Track), POCSO, Palwal, is allowed. The order dated 05.01.2023 passed by the learned Special Court in case

Sections 67 I.T.Act, 328, 376-D, 506 and 201 of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012, declaring the petitioner as proclaimed person and all subsequent proceedings arising therefrom are quashed subject to payment of costs of Rs.10,000/- to be deposited with the PGIMER Chandigarh Poor Patients’ Welfare Fund, for wasting precious time of the Court, within two weeks from today, failing which the relief granted to the petitioner by this order shall be deemed to be automatically vacated.

(HARPREET SINGH BRAR)

JUDGE

20.09.2024

Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No