

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

283

CRM-M-51035-2023 (O&M)
Date of decision: 06.03.2024

Surmo Din

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Amit Gupta, Advocate
for the petitioner.

Mr. A. S. Samra, 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 order dated 10.04.2023 (Annexure P-3), passed by the Additional Chief Judicial Magistrate, Gurdaspur, in case titled as *State vs. Sher Ali and others.*, arising out of FIR No. 33 dated 26.05.2022, registered under Sections 363, 366, 120-B, 376-D, 365 and 344 of IPC at Police Station Tibber, District Gurdaspur, whereby he had been declared a proclaimed offender.

2. Brief facts relevant for the disposal of the present petition are that the aforementioned FIR was registered on the statement of complainant/respondent No. 2 'M' on 26.05.2022 alleging therein that on 25.05.2022 at about 06:00 AM, he and his cousin Bano were present in the

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house and his sister 'R' (*name withheld*), who is the victim, was standing outside the house. In the meanwhile, accused persons namely Sharif, Manu, Sher Ali, Makhan, Hasandin came there in a car and forcibly took his sister in the said car and fled away from the spot. The complainant made search for her at his own level but could not find her. The motive of the accused persons behind the incident was to perform the marriage of the victim with Sharif but since the victim was not of marriageable age, the complainant was reluctant for her marriage at that stage. However, the accused persons, in connivance with each other, forcibly took the victim for the aforesaid purpose. He prayed for taking action against the culprits. Initially, a case under Sections 363, 366 and 120-B of IPC was registered. Investigation proceedings were initiated. The victim was recovered and on the basis of her statement recorded under Section 164 Cr.P.C., offences under Sections 376-D, 365 and 344 of IPC were also added. After completion of the investigation, the *challan* under Section 173 Cr.P.C. was presented in Court. However, during the course of trial, since the presence of the petitioner, who was also nominated as accused, could not be secured, proceedings under Section 82 Cr.P.C. were initiated against him and she was declared a proclaimed offender, vide impugned order dated 10.04.2023.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that while declaring him a proclaimed offender, the proper procedure as laid down under Section 82 Cr.P.C. had not been followed. The petitioner was never served with the summons/warrants at his ordinary place of residence and he was not aware of

the proceedings pending against him. It is, therefore, urged that the impugned order is liable to be set aside.

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

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

6. 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 offender, I am of the considered opinion that the impugned order dated 10.04.2023 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

7. 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. –

(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:-

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- (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).”*

8. 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 CrI. 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.

9. 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 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

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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 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

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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.

10. On applying the above discussed position of law to the peculiar facts and circumstances of the present case and on a perusal of the order dated 02.12.2022, it is revealed that due to non-appearance of the petitioner and some other co-accused, non-bailable warrants were ordered to be issued against them for 12.12.2022. On 12.12.2022, the warrants issued against the petitioners were received back unexecuted, on which, the trial Court had observed that the petitioner was intentionally avoiding service and proclamation under Section 82 Cr.P.C. was issued for 10.01.2023. On 10.01.2023, without recording the fate of earlier proclamation, the trial Court had ordered for publication of a fresh proclamation for 20.02.2023, on which date, it was recorded that the proclamation was duly effected and the statement of the serving police official was recorded. However, since the statutory period of 30 days had not elapsed, the case was adjourned to 27.02.2023 for awaiting the appearance of the petitioner and co-accused. However, the trial Court had failed to consider that it could not have simply adjourned the case and a fresh publication was required to be issued, once the period between issuance of publication of proclamation and the specified period of hearing was less than 30 days. Reference in this context can be made

to ***Dilbagh Singh Vs. State of Punjab (P&H) : 2015 (8) R.C.R. (criminal)***

166. A perusal of the report of the serving police official further shows that the proclamation was executed on 25.01.2023 but it was not read over publicly in some conspicuous place of the town or village in which the accused was supposed to be residing, which is clear violation of the procedure as laid down under Section 82(2)(i)(a). The three sub-clauses, which are (a) to (c) of Section 82 (2)(i) of 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. Reliance in this regard can be placed upon ***Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368.***

12. Accordingly, in view of the above discussion, the present petition is allowed and the impugned order dated 10.04.2023 (Annexure P-3), passed by the Additional Chief Judicial Magistrate, Gurdaspur, in case titled as ***State vs. Sher Ali and others.***, arising out of FIR No. 33 dated 26.05.2022, registered under Sections 363, 366, 120-B, 376-D, 365 and 344 of IPC at Police Station Tibber, District Gurdaspur, whereby he had been declared a proclaimed offender, is quashed with all consequential proceedings arising therefrom.

13. However, the petitioner is directed to surrender before the Court concerned within a period of two months from today, 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.

06.03.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>