



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

285

**CRM M-55188 of 2023
Date of Decision: 29.07.2024**

Praveen Kumar Gurjar @
Praveen Kasana

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Gurmohan Singh Bedi, Advocate
for the petitioner.

Mr. Rajinder Kumar Banku, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C., with a prayer to quash the impugned order dated 01.09.2022 (Annexure P-7) passed by the Court of Additional Chief Judicial Magistrate, Gurugram in a case arising out of FIR No. 0107 dated 10.02.2017 under Sections 120-B, 403, 406, 417, 418, 420 and 424 of IPC registered at Police Station DLF II, Gurugram (Annexure P-1) and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner contends that the petitioner was falsely involved in case FIR No. 0107 dated 10.02.2017 under Sections 120-B, 403, 406, 417, 418, 420 and 424 of IPC registered at Police Station DLF II, Gurugram (Annexure P-1). After registration of the FIR (Annexure P-1), the police moved

an application before the Court of Additional Chief Judicial Magistrate, Gurugram, for issuance of warrants of arrest against the petitioner and his co-accused. The warrants of arrest against the petitioner were issued for 22.12.2021. Thereafter, the warrants of arrest repeatedly issued against the present petitioner. Learned counsel further contends that the non-bailable warrants issued against the present petitioner were received back unexecuted and ultimately without recording any satisfaction as provided under Section 82 Cr.P.C., the proclamation was issued against the present petitioner. He further contends that on 20.04.2022, the serving Constable Devender Kumar appeared before the trial Court and stated that he had gone to the house of the petitioner and the younger brother of the petitioner was found. The younger brother also informed Constable that the petitioner was not residing in the house since 03 years and they had no contact with him. Thereafter, a copy of the order was pasted outside the house of the petitioner, at bus stand and a copy was pasted outside the Court. Thereafter, vide the impugned order dated 01.09.2022, the petitioner was ordered to be declared as a proclaimed person illegally. He further submits that the petitioner was declared to be a proclaimed person in violation of the procedure prescribed under Section 82 of Cr.P.C. and without considering the fact that there was no actual proclamation for the petitioner to appear before the concerned Court on 01.09.2022. Learned counsel further contends that in fact, the petitioner had shifted from the place mentioned in the

warrants of arrest, about 03 years ago and was never served at the correct address.

3. Learned counsel further contends that the petitioner was completely unaware of the pendency of the proceedings arising out of the FIR. However, when the petitioner came to know about the registration of the FIR, he moved a petition under Section 482 Cr.P.C. for quashing of the FIR on the basis of the compromise and since the petitioner has already been declared as proclaimed person, the said petition was withdrawn with liberty to file the same with better particulars, at an appropriate stage. He further contends that the petitioner was never served with the warrants of arrest nor with the proclamation for appearance before the concerned Court and the impugned order dated 01.09.2022 (Annexure P-7) is liable to be set aside by this Court.

4. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that he had been declared as proclaimed person after taking into consideration his conduct as well as facts and the circumstances of the present case. The trial Court had repeatedly issued warrants against the petitioner, still, he chose not to appear before the Court and was rightly declared to be proclaimed person.

5. I have heard learned counsel for the parties and perused the record.

6. While discussing the similar issues, this Court had held in CRM M-25921 of 2020 titled as “**Harvinder Singh Vs. State of Haryana and another**”, as follows:-

“Section 82 of the Cr.P.C., which provides for publication of proclamation against person absconding, 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:—

(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).”

The essential requirements of Section 82 of the Cr.P.C. 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 Vs. 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.. (See Rohit Kumar Vs. 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 Vs. Emperor : AIR 1943 Patna 366 and Devender Singh Negi Vs. 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 Vs. State of Mysore : 1969 CrI LJ 826 and Shokat Ali Vs. 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 Vs. State of Punjab (P&H) : 2015 (8) R.C.R. (criminal) 166*

and Ashok Kumar Vs. 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.. 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. (See **Pawan Kumar Gupta Vs. 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 Vs. 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.. 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 Vs. State : 1958 CriLJ 965).

(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. (See Devendra Singh Negi alias Debu Vs. State of U.P. and another: 1994 CriLJ 1783 and Pal Singh Vs. The State : 1955 CriLJ 318)".

7. In the present case also, it is apparent from the statement (Annexure P-4) of serving Constable Devender Kumar that the said official did not publically read out the publication in some conspicuous place in the village, where the petitioner ordinarily resided. Thus, the essential conditions laid down under Section 82(2) (i)(a) of Cr.P.C. as to the mode of publication of proclamation was not complied with. The Hon'ble Supreme Court as well as this Court have held in number of judgments where the proclamation was not

publically read in some conspicuous place in the town/village, in which, the accused ordinarily resided, the proclamation was also not duly published and the proclamation and subsequent proceedings arising therefrom were ordered to be quashed.

8. In view of the above referred precedents and the facts and circumstances of the case, the issuance and publication of proclamation was in breach of prescribed procedure and the impugned order dated 01.09.2022 (Annexure P-7) passed by the Court of Additional Chief Judicial Magistrate, Gurugram, whereby, the petitioner declared to be a proclaimed person is liable to be quashed.

8. Consequently, the present petition is allowed and impugned order dated 01.09.2022 (Annexure P-7) passed by the Court of Additional Chief Judicial Magistrate, Gurugram alongwith all consequential proceedings arising therefrom is hereby ordered to be quashed.

29.07.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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