

2024:PHHC:152711



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-107-2023
Date of Decision:13.11.2024

Navdeep Singh Shergill ...Petitioner
Vs.
State of Punjab and another ...Respondents

Coram : Hon’ble Mr. Justice N.S.Shekhawat

Present: Mr. Navraj Singh Mahal, Advocate
for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

Mr. Harmanjeet Singh Dhaliwal, Advocate
for respondent No. 2-complainant.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to quash the impugned order dated 05.09.2009 (Annexure P-5) passed by the Court of Additional Sessions Judge, Jalandhar, whereby, the petitioner has been declared as proclaimed offender in a case FIR No. 38 dated 21.03.2007 under Sections 307, 511, 341, 506, 148 and 149 of IPC registered at Police Station Nurmahal, District Jalandhar.
2. Learned counsel for the petitioner contends that the petitioner was falsely involved in a criminal case, i.e., FIR No. 38 dated 21.03.2007 under Sections 307, 511, 341, 506, 148 and 149 of IPC registered at Police

Station Nurmahal, District Jalandhar. After the registration of the FIR, there were talks of compromise between the complainant and the accused. In the meantime, the petitioner got an opportunity to study abroad and joined a two years diploma in Automotive and Mechanical from Ashmark Institute of Malbourne (Australia). In the month of April 2009, he went to Australia on study basis. In the meantime, the summons/warrants were issued to the petitioner, however, warrants/summons could not be served on the petitioner as he was abroad. Even, no efforts were made by the prosecution to serve the petitioner at his address, through the Embassy.

3. Learned counsel further contends that vide order dated 08.07.2009 (Annexure P-3), the trial Court observed that it was not possible to serve the petitioner through ordinary manner and his presence should be secured through proclamation under Sections 82 and 83 Cr.P.C. for 08.09.2009. On 08.08.2009, the case was taken up and the statement of serving constable Balwinder Pal was recorded. Apart from that, it was found that the proclamation issued against the petitioner was effected on 31.07.2009 and it was received back duly effected. However, on 08.08.2009, the period of 30 days had not elapsed and case was adjourned to 05.09.2009 awaiting presence of the petitioner. Ultimately, vide the order dated 05.09.2009 (Annexure P-5), the petitioner was declared as a proclaimed offender in the criminal trial. Learned counsel for the petitioner further contends that the adjournment from 08.08.2009 to 05.09.2009, did not meet the requirement of Section 82 of Code of the Criminal Procedure and the petitioner has been wrongly declared as a proclaimed offender.

4. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner had intentionally not appeared before the trial Court for several months and is not entitled for any relief. It was submitted that the petitioner had the knowledge of pendency of the proceedings against him, however, he chose not to appear before the trial Court and the petition is liable to be dismissed. However, learned State counsel could not rebut the factual submissions made by learned counsel for the petitioner in the present case.

5. It has been held by this Court in the matter of Ashok Kumar Vs. State of Haryana and Anr.2013(4) RCR (Criminal) 550 as under:

3.“As per order dated 04.01.2013 passed by the learned Additional Chief Judicial Magistrate, Panipat the case has been adjourned for 06.03.2013 for issuing of proclamation under Sections 82 and 83 Cr.P.C.against petitioner Ashok Kumar. The order dated 06.03.2013, shows that proclamation issued against Ashok Kumar received back duly executed. Statement of Serving Constable was also recorded. Period of 30 days had not elapsed from the date of publication. Therefore, the case was adjourned to 13.3.2013. On that day, the petitioner was declared as proclaimed offender. The original record also shows that the statement of the serving official, namely, ASI Dilbag Singh was recorded on 6.3.2013, who stated that on 9.2.2013, he visited the place of residence of the accused along with proclamation. After reading publicly, the proclamation was affixed at conspicuous part of the house of the accused where he ordinarily resides. A copy of the proclamation was also affixed at conspicuous part of the Court house, which means that the publication was effected on 9.2.2013 for 6.3.2013, which shows

that after the publication of the notice, the accused was not given the mandatory period of 30 days to appear before the Court. The mere fact that the Court adjourned it after the period of 30 days will not be treated as compliance of the provisions of Section 82 (1) Cr.P.C. where it is provided that :-

“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.

(1) XX XX XX XX XX XX XX

(2) XX XX XX XX XX XX XX

4. “In view of the above provisions of Section 82(1) Cr.P.C., it is clear that the publication was effected on 9.2.2013 and the accused was directed to appear in the Court as per that publication on 6.3.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned order on 13.3.2013, the publication has been effected as per the provisions of Section 82 Cr.P.C. There was no order in the publication for the accused giving specified time and place to appear on 13.3.2013. Therefore, this order is not as per law and the same is set aside”.

6. Still further, it has been held by this Court in the matter of **Avtar Singh Vs. State of Punjab and Anr. in CRM-M-1866-2017** which is as under:-

“The above quoted provision is clear that through the proclamation made prior to declaration of a person as a

proclaimed offender, he should be given not less than thirty days from the date of its proclamation to appear at a specified place and a specified time.

In the case in hand, thirty days were not given to the petitioner to appear before the Trial Court as the proclamation was made on 13.05.2011 requiring him to appear before the Trial Court on 14.05.2011. Thus, the proclamation and the subsequent order dated 03.09.2011 (Annexure P-2) declaring the petitioner to be a proclaimed offender do not confirm with the mandate of Section 82 (1) of the Code.

7. In the present case also, this Court has no hesitation to hold that the mandatory provisions of Section 82 of the Cr.P.C have not been complied by the trial Court. Vide the order dated 08.07.2009, the proclamation of the accused was ordered to be issued for 08.08.2009. On 08.08.2009, the proclamation of the petitioner received back duly effected on 31.07.2009 and the statement of the serving constable Balwinder Pal recorded by the trial Court. Since the statutory period was less than 30 days, the case was adjourned to 05.09.2009 for awaiting the presence of the petitioner. In fact, the trial Court had not granted the statutory period of 30 days to the petitioner to appear before the trial Court and any adjournment to comply with the statutory period cannot be construed as sufficient compliance of provisions of Section 82(1) of Cr.P.C. Thus, in view of the law laid down by this Court in the matter of **Ashok Kumar and Avtar Singh (supra)**, it can be safely concluded that the trial Court had not complied with the provisions of Section 82(1) Cr.P.C., while declaring the petitioner as proclaimed offender.

8. Still further, the FIR in the present case was registered on 21.03.2007 and as per the learned counsel for the petitioner, the matter has

been amicably resolved between the parties, no purpose will be served by sending the petitioner behind the bar after such a long period.

9. In view of the above discussion, the impugned order dated 05.09.2009 (Annexure P-5) passed by the Court of Additional Sessions Judge, Jalandhar, whereby, the petitioner has been declared as proclaimed offender in a case FIR No. 38 dated 21.03.2007 under Sections 307, 511, 341, 506, 148 and 149 of IPC registered at Police Station Nurmahal, District Jalandhar is ordered to be set-aside.

10. Consequently, the petitioner is permitted to surrender before the learned trial Court/Area Magistrate/Duty Magistrate within a period of six weeks from today and on his surrender, he shall be admitted to bail by the concerned Court on his furnishing bail bonds/surety bonds to the satisfaction of the concerned Court. The Court, which admits the petitioner to bail, shall also be at liberty to impose such reasonable conditions, as provided by law. In case, the petitioner does not surrender within a period of six weeks from today, the present petition shall be deemed to be dismissed by this Court.

11. The petition is disposed off in above terms.

13.11.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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