

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

CRM-M-59658-2023 (O&M)
Date of decision: 16.01.2024

Surjit Singh ...Petitioner

Versus

State of Punjab ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Dinesh Mahajan, Advocate
for the applicant-petitioner.

Ms. Ruchika Sabherwal, DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. CRM-420-2024

Allowed as prayed for.

Copy of order dated 14.10.2021 is taken on record as
Annexure P-7.

2. CRM-M-59658-2023 (O&M)

The instant petition has been filed by the petitioner under Section
482 Cr.P.C. seeking quashing of order dated 01.12.2021 (Annexure P-3),
passed by the Chief Judicial Magistrate, Pathankot in case titled as *State of
Punjab vs.Surjit Singh @ Rinku*, arising out of FIR No. 174 dated
29.09.2021, registered under Sections 376, 511, 458, 323 of the IPC at Police
Station Shahpur Kandi, District Pathankot, whereby he had been declared a
proclaimed person.

3. Briefly stated the facts of the case are that the aforementioned
FIR was registered on the statement recorded by the complainant/prosecutrix
'L' (name withheld) alleging therein that her husband was serving in Army

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and she had been residing in a rented house with her children for about one year. On 28.09.2021 at about 11:30 PM, when she had gone to bathroom, which was built up outside the room only within the four walls and the lights were on there, the petitioner, who was known to her, entered into the bathroom and tried to rape her and manhandled her, which caused injuries on her body. When she shouted for help, the petitioner ran away by jumping over the wall. The complainant along with her neighbor Sharda Guleria went to the police station and reported the matter. She prayed for taking action against the petitioner. After registration of the FIR, investigation proceedings were initiated. After completion of necessary investigation and usual formalities, the *challan* was presented in Court on 26.11.2021 without the apprehension and arrest of the petitioner and without his knowledge. Since the presence of the petitioner could not be secured before the trial Court despite issuance of non-bailable warrants, proclamation was ordered to be issued against him for 01.12.2021, on which date, he was declared a proclaimed person and he came to know about this fact only when he moved application for grant of anticipatory bail.

4. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he had been falsely implicated in this case. In fact, the petitioner was a neighbor of the petitioner and there was a dispute with regard to parking of vehicles. The complainant had levelled general and vague allegations against the petitioner. The incident is alleged to have occurred at 11:30 PM on 28.09.2021 and all the family members of the complainant must be in the house but there is no eyewitness to the same. It is further argued that the petitioner was never served with the

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summons/warrants, he has wrongly been declared a proclaimed person without following the mandatory provisions of Section 82 Cr.P.C. The petitioner is ready to join Court proceedings and face the trial. 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 resisted the petition by submitting that there is no infirmity in the impugned order and the petitioner has rightly been declared a proclaimed person as he was running away from the process of Court. She has, thus, prayed for dismissal of the present petition.

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

7. On giving due deliberations to the contentions as raised by learned senior 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 01.12.2021 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. –

(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

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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).”

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 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.**

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(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 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.

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(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 noticed that on 14.10.2021, non-bailable warrants issued against the petitioner were received unexecuted. It was observed by the trial Court that an application had been moved by the prosecution for issuing proclamation against the petitioner on the grounds that the bail application of the petitioner had been dismissed by the Additional Sessions Judge, Pathankot and considering the same, the trial Court ordered for issuing proclamation against the petitioner for 01.12.2021. Since the petitioner did not appear before the Court on 01.12.2021, he was declared a proclaimed person by passing the impugned order. A perusal of the record nowhere shows that before passing the impugned order, declaring the petitioner a proclaimed person, the trial Court had recorded its satisfaction to the effect that the petitioner had been duly served with a notice/warrant or it was satisfied that he had absconded or was concealing himself so that such

warrant could not be executed or the same could not be issued despite due diligence. More so, a perusal of the report submitted by the serving police official, namely ASI Sanjeev Kumar, shows that he had affixed the proclamation at the house of the petitioner as well as at the Chowk of the village but he had not affixed the proclamation at a conspicuous part of the Court premises, which amounts to violation of the provision prescribed under Section 82(2)(c) Cr.P.C. It is settled law that the conditions specified in Section 82(2) of the Cr.P.C. for publication of a proclamation against an absconder are mandatory and any non-compliance thereof cannot be cured as an 'irregularity' and it will render the proclamation and proceedings subsequent thereto, a nullity. Accordingly, it can be concluded that the petitioner was wrongly declared a proclaimed person in breach of the prescribed procedure. Therefore, the impugned order dated 01.12.2021 suffers from material illegalities and is liable to be quashed.

12. Accordingly, the present petition is allowed and the impugned order dated 01.12.2021 (Annexure P-3), passed by the Chief Judicial Magistrate, Pathankot in case titled as ***State of Punjab vs. Surjit Singh @ Rinku***, arising out of FIR No. 174 dated 29.09.2021, registered under Sections 376, 511, 458, 323 of the IPC at Police Station Shahpur Kandi, District Pathankot, whereby the petitioner has been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

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

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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.

16.01.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

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