

2024-PHHC-104419



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

229

CRM M-60635 of 2023
Date of Decision: 09.08.2024

Sushil Kumar		...Petitioner
	Versus	
State of Haryana		... Respondent

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

Present : Ms. Sukhpreet Kaur Grewal, 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 22.10.2019 (Annexure P-2) passed by the Court of Sub-Divisional Judicial Magistrate, Pehowa, whereby, the petitioner has been declared as proclaimed person in a case arising out of the FIR No. 225 dated 25.04.2018 (Annexure P-1) under Section 365 registered at Police Station Pehowa, District Kurukshetra, (Annexure P-1).
2. Learned counsel for the petitioner submits that a false FIR No. 225 dated 25.04.2018 under Section 365 IPC Police Station Pehowa, District Kurukshetra (Annexure P-1) had been registered against the petitioner and three other accused at the instance of Harpal Singh, complainant. She further contends that on 01.06.2018, the

petitioner was ordered to be released on bail and the challan was presented against the petitioner and two more accused, namely, Parveen and Rahul before the Area Magistrate on 05.10.2018. However, the petitioner was wrongly informed by the police that he had been declared as innocent and he went to Canada on 23.09.2018 for his further studies. Since, he could not appear on 05.10.2018, his bail was cancelled and the bail bonds and surety bonds were ordered to be forfeited to the State and the warrants were issued against the petitioner. She further contends that the warrants of arrest were repeatedly issued against the petitioner, however, the petitioner was abroad and warrants were never served on him. Learned counsel further contends that on 12.03.2019, the proclamation was ordered to be issued against the petitioner for 14.05.2019. However, on 14.05.2019, it came to the notice of the Court of SDJM, Pehowa, that inadvertently, the proclamation could not be issued against the petitioner, but by mistake it was issued against the co-accused Parveen Saharan. Consequently, it was ordered that the proclamation against the petitioner be issued for next date of hearing, i.e., 17.09.2019. On 17.09.2019, the statement of the serving constable was recorded and as per his statement proclamation was executed against the petitioner on 14.09.2019, i.e., 03 days prior to the date of hearing. As the statutory period of 30 days had not been elapsed from the date of the publication of the proclamation, so the matter was adjourned to 22.10.2019 for the appearance of the present petitioner.

Learned counsel contends that from these submissions, it was apparent that the mandatory provisions of Section 82 had not been complied by the trial Court and the petitioner was wrongly declared to be proclaimed person.

4. On the other hand, learned State counsel had 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. I have heard learned counsel for the parties and perused the record.

6. 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”.

7. 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”.

8. 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 order dated 14.05.2019, the

proclamation was issued against the petitioner for 17.09.2019. However, the said proclamation was published on 14.09.2029, i.e., 03 days prior to the date of hearing, i.e., 17.09.2019 fixed before the trial Court. Thus, by publication of the proclamation, only notice of 03 days was granted for the appearance of the petitioner and the statutory notice of 30 days was not granted. Even, the trial Court admitted the said lapse on 17.09.2019 and the case was adjourned to 22.10.2019 for completion of period 30 days. However, this adjournment to 22.10.2019 cannot be construed as sufficient compliance of the provisions of Section 82 Cr.P.C. Thus, in view of the mandatory provisions of Section 82 of Cr.P.C and the ratio 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 Cr.P.C., while declaring the petitioner as proclaimed person.

9. As a sequel to the above discussion, the impugned order dated 22.10.2019 (Annexure P-2) passed by the Court of Sub-Divisional Judicial Magistrate, Pehowa and all subsequent proceedings arising therefrom are hereby ordered to be quashed and the petition stands allowed.

10 Consequently, the petitioner is permitted to surrender before the learned trial Court/Area Magistrate/Duty Magistrate within a period of 8 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 8 weeks from today, the present petition shall be deemed to be dismissed by this Court.

09.08.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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