

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

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CRM-M-64221-2023 (O&M)

Date of decision: 07.03.2024

Manjit Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. H. S. Randhawa, Advocate
for the petitioners.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

Mr. Jaiveer Singh Sandhu, Advocate
for respondent No. 2

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioners under Section 482 Cr.P.C. seeking quashing of order dated 05.06.2023 (Annexure P-8), passed by the Judicial Magistrate First Class, Patiala, in case titled as ***State vs. Manjit Singh etc.***, arising out of FIR No. 03 dated 01.03.2017, registered under Sections 406, 498-A and 506 of the IPC at Police Station NRI, District Patiala, whereby they had been declared as proclaimed persons.

2. Brief facts relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on a written complaint filed by the complainant/respondent No. 2 Sukhwinder Kaur alleging therein that she was married with the son of the petitioners, namely Kamaljit Singh, on 16.01.2016. Her husband was residing in Portugal and had come to India to perform marriage with her. The marriage was registered on 02.03.2016.

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However, the complainant was subjected to cruelty and harassment by her in-laws on account of demand of dowry and was also criminally intimidated. Her dowry articles were also misappropriated by the accused persons. After registration of the FIR, investigation proceedings were initiated and after completion of the same, the *challan* was presented in Court qua the present petitioners only and co-accused Jarnail Singh @ Jaila was found to be innocent. During the course of trial, since the presence of the petitioners could not be secured, proceedings under Section 82 Cr.P.C. were initiated against them and they were declared as proclaimed persons, vide impugned order dated 05.06.2023.

3. The present petition has been filed by the petitioners on the grounds and it has been argued by their counsel that while declaring them as proclaimed persons, the proper procedure as laid down under Section 82 Cr.P.C. had not been followed as they were abroad at the relevant time. He has argued that initially, the petitioners were granted interim bail by the trial Court and they had joined the investigation on 21.04.2017 and recovery of dowry articles was effected from them. It is also argued that subsequently the matter was compromised between the parties and the marriage between the complainant and son of the petitioners stands dissolved, vide decree of divorce dated 25.07.2023 (Annexure P-12). With these submissions, learned counsel for the petitioners has argued that the impugned order is liable to be set aside.

4. Learned State counsel has filed the status report. He has argued that the petitioners were having knowledge about the pendency of the trial and had intentionally avoided their appearance before the trial Court. Therefore,

they were rightly declared proclaimed persons. Hence, it is urged that the petition is liable to be dismissed.

5. Learned counsel for respondent No. 2/complainant has, however, admitted to the factum of the compromise arrived at between the parties and has submitted that the complainant has no objection if the present petition is allowed.

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

7. 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 petitioners till the date of declaring them proclaimed persons, I am of the considered opinion that the impugned order dated 05.06.2023 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 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).”*

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 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.

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.
- (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.

11. On applying the above discussed position of law to the peculiar facts and circumstances of the present case and on a perusal of the zimini orders, which have been placed on record, it is revealed that the petitioners were earlier declared proclaimed persons without issuing any proclamation and on noticing the said fact, the trial Court, on 27.09.2022, rectified the said error and the proclamation was issued for 17.10.2022, on which date, statement of the serving police official SI Harvinder Kaur was recorded, as per which, the proclamation was executed only qua petitioner No. 1 Manjit Singh on 15.10.2022, which means the period of only 02 days were given to the accused to cause appearance before the trial Court. The matter was then adjourned to 17.11.2022 for awaiting the presence of accused Manjit Singh. However, the trial Court ignored the fact that it could not have simply adjourned the case. Rather a fresh proclamation was required to be issued. Further, on 17.11.2022, there was non-appearance on behalf of petitioner No. 1 before the trial Court and while adjourning the case to 01.12.2022, proclamation qua accused Rajwant Kaur was ordered to be issued for the said date. Thereafter also, due to non-appearance of the petitioners, the trial Court kept on adjourning the case awaiting the appearance of the petitioners without

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issuing any fresh proclamation. Hence, the entire process of declaring the petitioners as proclaimed persons vide impugned order dated 05.06.2023, wherein they were neither given mandatory period of 30 days to cause appearance before the Court nor while adjourning the case, the trial Court had issued fresh proclamation, was in clear violation of the mandatory provisions of Section 82 Cr.P.C. Reliance in this regard can be placed upon ***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 and Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550.***

12. Further, as reflected in the order dated 27.09.2022, it was very much in the knowledge of the trial Court that the accused were abroad but a perusal of the record shows that no efforts were made by it to serve the accused at their ordinary place of residence through the Ministry of External Affairs, Govt. of India in the country where they were residing. The trial Court could have easily collected the information regarding ordinary place of residence of the accused from the complainant but nothing of that sort was done. As such, it can reasonably be presumed that the process never reached the petitioners and hence, they had no occasion to conceal themselves. As such, the action of the trial Court by switching to the proclamation proceedings under Section 82 Cr.P.C. can itself be stated to be bad in the eyes of law. Reliance in this context can be placed upon ***Manjit Kaur vs. State of Punjab : 2013 SCC Online (P&H) 8663.***

13. This Court can also not lose sight of the fact that the marriage between the son of the petitioners and respondent No. 2 already stands

dissolved in pursuance of a compromise. The factum of compromise has also been admitted by learned counsel for respondent No.2/complainant, who has stated that the complainant has no objection if the present petition is allowed.

14. Accordingly, in view of the discussion made above, the present petition is allowed and the impugned order dated 05.06.2023 (Annexure P-8), passed by the Judicial Magistrate First Class, Patiala, in case titled as *State vs. Manjit Singh etc.*, arising out of FIR No. 03 dated 01.03.2017, registered under Sections 406, 498-A and 506 of the IPC at Police Station NRI, District Patiala, whereby they had been declared as proclaimed persons, is quashed with all consequential proceedings arising therefrom.

15. However, the petitioners are directed to surrender before the Court concerned within a period of four weeks 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 petitioners 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.

16. 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.

07.03.2024

(MANISHA BATRA)
JUDGE

Waseem Ansari

Whether speaking/reasoned

Yes

Whether reportable

Yes