

2024.PHHC:170774



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

Sr. No.252

**CRM-M-61876-2024 (O&M)
Date of decision : 19.12.2024**

Vijay Sharma

..... Petitioner

VERSUS

State of Haryana and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. P.S. Ahluwalia, Advocate for the petitioner

Mr. Gaurav Bansal, DAG, Haryana.

Mr. Arjun Atri, Advocate, for respondent No.2.

KIRTI SINGH, J. (Oral)

1. This petition has been filed under Section 528 of BNSS, 2023 for quashing of the impugned order dated 13.02.2017 (Annexure P6) passed by the Addl. Chief Judicial Magistrate, Gurugram whereby, the petitioner was declared a proclaimed offender in case No. COMI/73485 of 2013 dated 24.12.2009 titled as 'Sangeeta Vs. Vijay etc.' wherein the petitioner has been summoned to face trial for offences under Sections 420, 493 & 495 of IPC.

2. Succinct factual narrative relevant for the disposal of the case is that the abovesaid complaint was lodged by respondent No.2 alleging that the petitioner by concealing his marital status performed marriage with her. The trial Court issued summons to the petitioner to face trial in this case vide order dated 18.04.2015. Since the petitioner did not appear before the learned Court, proclamation proceedings were initiated and due to his non-

2024.PHHC:170774



appearance the petitioner was declared proclaimed offender vide order dated 13.02.2017 (Annexure P6).

3. Learned counsel for the petitioner submits that learned trial Court has erred while declaring the petitioner as a proclaimed offender without complying with the mandatory provisions of Section 82 Cr.P.C. He while referring to proclamation notice dated 09.01.2017 (Annexure P9) contends that the petitioner was directed to appear before the trial Court on 16.01.2017 and he was not granted the mandatory 30 days period in compliance to Section 82(1) Cr.P.C. The petitioner has been residing in Dubai, United Arab Emirates since 2016 and he had no knowledge of the this case as the summons and warrants were not executed as the same were not issued at the correct address since the petitioner left India on 13.10.2016. He was never served and the learned trial Court never made any efforts to serve him at his foreign address in compliance of Section 105 Cr.PC. He has relied upon copy of passport (Annexure P10) to substantiate his claim. He further submits that a mere perusal of section 82 Cr.P.C. would reveal that before a proclamation can be issued, the Court should have reasons to believe (whether after taking evidence or not) that a person, against whom a summons had been issued, is concealing himself and as a result the summons cannot be executed/served. The orders clearly show that while issuing process under Section 82/83 Cr.P.C. the court did not record satisfaction that the summons against the petitioner could not be served or that he was concealing himself. In fact, no effort was made to serve the petitioner at his address, further, there is nothing to show that summons were ever attempted to be served on the petitioner through Ministry of External

2024.PHHC:170774



affairs at United Arab Emirates. The orders have been passed without following the due procedure and are not maintainable and hence liable to be quashed. Hence, there are lacunas in the procedure followed by the learned Court.

4. Learned counsel has placed reliance upon the order dated 05.08.2013 passed by a Coordinate Bench of this Court in CRM-M-13638-2013 and order dated 03.12.2021 passed in CRM-M-50551-2021.

5. In compliance to the order dated 10.12.2024, status report has been filed by the learned State counsel in Court today. The same is taken on record.

6. At this stage, Mr. Arjun Atri, Advocate, has put in appearance on behalf of respondent No.2 and has filed his vakalatnama in Court today. The same is taken on record. He submits that the petitioner despite the proclamation has failed to appear before the trial Court and has rightly been declared proclaimed persons vide the impugned order.

7. Heard.

8. A perusal of proclamation notice reveals that the notice was issued on 09.01.2017, whereby, the petitioner was directed to appear on 16.01.2017, thus, the petitioner was not granted 30 days mandatory period in compliance of Section 82 Cr.P.C.

9. 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

2024.PHHC:170774



*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).”

10 It is clear from the record that warrant of arrest was issued and proclamation proceedings under Section 82 Cr.P.C. were initiated against the petitioner when he was in United Arab Emirates. There is nothing on record to show that the trial Court had made any efforts or passed any order for serving the petitioner at his actual place of residence in United Arab Emirates through Ministry of External Affairs at United Arab Emirates.

2024.PHHC:170774



11. There is a 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 CrI. J. 2561, Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366, Devender Singh Negi Vs. State of U.P. : 1994 CrI 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. CRM-M-37501-2023 (O&M) 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.**

12. From the perusal of the case file, it can be inferred that the accused was not granted 30 days period from the date of proclamation to appear in the Court in compliance of Section 82(1) Cr.P.C. and the petitioner was residing in United Arab Emirates since 2016, therefore, there was no occasion for him to evade the process of law intentionally, as he was never served in accordance with law. Thus, the proclamation order dated 13.02.2017 (Annexure P6) is in gross violation of Section 82 & 105 Cr.P.C.

2024.PHHC:170774



13. In view of the aforesaid discussions, this Court is of the considered view that the impugned order dated 13.02.2017 (Annexure P6) vide which the petitioner has been declared as proclaimed absconder is not sustainable in the eyes of law and hence, the same deserves to be set aside.

14. In view of above, the petition stand allowed and the impugned order 13.02.2017 (Annexure P6) is set aside **subject to payment of cost of Rs.25,000/- by the petitioner to be deposited with the Poor Patient Welfare Fund, PGIMER Chandigarh** within a period of four weeks from today. The petitioner after depositing the cost as stated above would appear before the trial Court concerned within a period of one month from the date of this order and file appropriate application along with receipt of payment of cost. The trial Court would release the petitioner on furnishing bail bonds/surety bonds to its satisfaction. No coercive action would be taken against the petitioner till then. In case, the petitioner failed to appear before the trial Court or failed to deposit the cost as stated above, this order would be of no avail to the petitioner.

15. Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

19.12.2024
Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No