



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

246

CRM-M-5454-2023 (O&M)
Date of decision : 13.01.2025

GURMIT SINGH

.... Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Aditya Dassaur, Advocate for the
petitioner(s).

Ms. Aakansha Gupta, AAG Punjab.

KIRTI SINGH, J. (Oral)

This petition has been filed under Section 482 Cr.P.C. seeking the quashing of the order dated 17.09.2022 (Annexure P-5) passed by the JMIC, Dasuya, vide which the petitioner has been declared as proclaimed offender.

2. Learned counsel for the petitioner prayed for setting aside the order dated 17.09.2022 (Annexure P-5) whereby the petitioner was declared as proclaimed offender. The final report in this case was presented on 26.03.2021 and the petitioner was admitted to bail on the same day. Thereafter petitioner appeared on 08.07.2021 but due to some miscommunication between the petitioner and his counsel representing him before the trial Court, he failed to appear on 03.09.2021 and notice was issued for his presence. However, due to his non appearance, non-bailable warrants were issued which were received back unexecuted. Vide order dated 29.11.2021, the petitioner was ordered to be summoned through proclamation under Section 82 Cr.P.C., for 11.04.2022, which was received was unexecuted and fresh proclamation was issued for 02.06.2022, which was again received back unexecuted. He while referring to proclamation notice dated



16.09.2021 (Annexure P-6) contends that the petitioner was directed to appear before the trial Court on 08.10.2021 and he was not granted the mandatory 30 days period in compliance to Section 82(1) Cr.P.C. Learned Trial Court, on the basis of proclamation has declared the petitioner as proclaimed offender vide order dated 17.09.2022. 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.

3. I have heard learned counsel for the parties and perused the record.

4. A perusal of proclamation notice reveals that the notice was issued on 16.09.2021, whereby, the petitioner was directed to appear on 08.10.2021, thus, the petitioner was not granted 30 days mandatory period in compliance of Section 82 Cr.P.C.

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 ***Avatar 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. 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(1) Cr.P.C., while declaring the petitioner as proclaimed offender.

8. From the above referred discussion, it is evident that the trial Court had wrongly declared the petitioner as proclaimed offender and the impugned order dated 17.09.2022 (Annexure P-5) is illegal and unsustainable and liable to be quashed. Accordingly, the prayer qua setting aside of order dated 17.09.2022 (Annexure P-5) is allowed **subject to payment of Rs.10,000/- to be deposited in Poor Patient Welfare Fund, PGIMER, Chandigarh within a period of two weeks.** The petitioner after depositing the cost as stated above would appear before the trial Court within two weeks and file appropriate application along with receipt of payment of cost. The trial Court would release the petitioner on same bail bonds/surety bonds. No coercive action would be taken against the petitioner till then. In case, the petitioner fails to appear before the learned trial Court on said date or fails to deposit the cost as stated above, this order would be of no avail to the petitioner.

9. Pending application(s), if any, shall also be disposed of accordingly.

(KIRTI SINGH)
JUDGE

13.01.2025
Kavita

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