

2025:PHHC:013324



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

**CRM M-11019 of 2024
Date of Decision: 28.01.2025**

Amandeep Singh @ Aman @ Amna ... Petitioner

Versus

State of Punjab and another ... Respondents

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

Present : Ms. Prachi Gupta, Advocate for
Mr. Paramjit Singh Bal, Advocate, for the petitioner.

Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

None for respondent No. 2.

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 order dated 08.08.2023 (Annexure P-7) passed by the Court of Judicial Magistrate 1st Class, Payal, whereby, the petitioner has been declared as proclaimed person in a trial arising out of FIR No. 184 dated 26.11.2017 under Sections 323, 324, 341, 506, 148 and 149 IPC registered at Police Station Payal, Police District Khanna, District Ludhiana.

2. Learned counsel for the petitioner contends that on the basis of the statement made by respondent No. 2/complainant, a criminal case bearing FIR No. 184 dated 26.11.2017 under Sections

323, 324, 341, 506, 148 and 149 IPC was ordered to be registered at Police Station Payal, Police District Khanna, District Ludhiana against the petitioner, Harvir Singh and three unknown persons. After the registration of the FIR, a compromise dated 26.12.2023 (Annexure P-2) was effected between the parties and the complainant stated that he did not wish to pursue the case any further. Even though the compromise was effected with all the accused, however, a quashing petition, i.e., CRM M-30562 of 2013 was filed only on behalf of Manvir Singh and Jaskaran Singh, accused. The petitioner was under a bonafide impression that the quashing petition qua him had already been filed and due to this, he did not appear before the trial Court and went abroad. Learned counsel further contends that since the petitioner was abroad, the summons/warrants were never served on him. Still, vide order dated 21.02.2023, the Court of Sub-Divisional Judicial Magistrate, Payal, issued proclamation against the petitioner for 13.04.2023. In compliance of the order dated 21.02.2023 passed by the Sub Divisional Judicial Magistrate, Payal, the proclamation was published on 26.03.2024. On the adjourned date, i.e., 13.04.2023, the statement of the serving official HC Talwinder Singh was recorded by the trial Court and he stated that he had affixed the proclamation as per law on 26.03.2024. However, on 13.04.2023, the statutory period of 30 days had not elapsed after the publication of the proclamation, the case was adjourned to 11.05.2023 to complete the period of 30 days. Again on 11.05.2023, it was

observed by SDJM, Payal, that the period of 30 days had not elapsed and the case may be adjourned to 08.08.2023. Vide the impugned order dated 08.08.2023 (Annexure P-7), the Court had declared the petitioner as proclaimed person.

3. Learned counsel for the petitioner contends that even the trial Court had admitted that period of 30 days for appearance of the accused had not completed and the case was adjourned twice only for fulfilling the requirements of 30 days as provided under Section 82 Cr.P.C. However, such an adjournment by the trial Court would not fulfill the requirement of law and the impugned order is liable to be quashed by this Court.

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. 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 **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”.

7. In the present case also, it is apparent from the statement of HC Talwinder Singh, Executing Official (Annexure P-4) that the proclamation was published on 26.03.2024 and the accused was directed to appear on 13.04.2023. However, on 13.04.2023, the statutory period of 30 days had not elapsed and the case was adjourned to 11.05.2023. Again on 11.05.2023, the Court of SDJM, Payal, again observed wrongly that the period of 30 days had not elapsed and the case was adjourned to 08.08.2023 mechanically. In fact, on 11.05.2023, a period of 30 days had elapsed. Still further, vide impugned order dated 08.08.2023, the petitioner was declared as proclaimed person. From this, it is apparent that the trial Court had not granted the statutory notice of 30 days to the petitioner to appear before the trial Court and two repeated adjournments by the trial Court could never be termed as sufficient compliance of the provisions of Section 82(1) Cr.P.C. Thus, in view of the mandatory provisions of Section 82 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.

8. As a consequence, the impugned dated 08.08.2023 (Annexure P-7) passed by the Court of Judicial Magistrate 1st Class, Payal and all subsequent proceedings arising therefrom are ordered to be quashed qua the petitioner.

9. Still further, in the present case, the parties have already amicably resolved all their disputes. Thus, no purpose will be served by sending the petitioner behind the bars after such a long period. Consequently, the petitioner is permitted to surrender before the learned trial Court/Area Magistrate/Duty Magistrate within a period of six 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 six weeks from today, the present petition shall be deemed to be dismissed by this Court.

10. The petition is disposed off in above terms.

28.01.2025

amit rana

(N.S.SHEKHAWAT)

JUDGE

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