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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 15.01.2025

Ravi

...Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Abhishek Goyal, Advocate for
Mr. Amit Gautam, Advocate for the petitioner.
Mr. Parveen Kumar Aggarwal, DAG Haryana.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 482 of Cr.P.C., 1973, seeking setting-aside of order dated 24.11.2022 (Annexure P-4) passed by the trial Court whereby the bail granted to the petitioner stands cancelled and his bail bonds and surety bonds stand forfeited to the State as also order dated 12.06.2023 (Annexure P-6) passed by the Chief Judicial Magistrate, Kurukshetra whereby the petitioner was declared proclaimed person in case No.CHI/305/2016 in FIR No.55 of 2016 dated 04.02.2016 registered at Police Station Thanesar Sadar, District Kurukshetra.

2. Learned counsel for the petitioner has drawn the attention of this Court to order dated 05.03.2024 passed by this Court whereby it was directed that in case the petitioner caused appearance before the concerned Court and applies for bail, his plea shall be decided within three days. Pursuant to the said order, the petitioner appeared before the concerned Court and was admitted to bail vide order dated 13.03.2024 passed by Chief

Judicial Magistrate, Kurukshetra. Learned counsel seeks to place on record

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copy of the order dated 13.03.2024 passed by the trial Court, which is taken on record.

2.1. In view of the factual matrix of the case, learned counsel for the petitioner has limited his prayer only to the extent of setting-aside of the order dated 12.06.2023 passed by the Chief Judicial Magistrate, Kurukshetra, whereby the petitioner was declared a proclaimed person. While assailing the said order, learned counsel has argued that the order declaring the petitioner as proclaimed offender is not sustainable and is liable to be set-aside. It has been further argued that no effective step was taken in the case to serve the petitioner with warrants before issuance of proclamation against him. Learned counsel asserts that the impugned order has been passed based on fabricated and false reports. It is submitted by the learned counsel that the petitioner was neither personally served with any notice nor was any process ever properly executed or communicated to him. Learned counsel asserts that the impugned order has been passed without properly scrutinizing or verifying the authenticity of the report submitted by the process server. Consequently, the order declaring the petitioner as a proclaimed offender is unsustainable in the eyes of law and deserves to be set-aside.

3. Learned State counsel has opposed the claim of the petitioner seeking quashing of the order declaring the petitioner as proclaimed offender in the case. While refuting the case of the petitioner, detailed arguments concerning the merits of the case were made and it is argued that the offence alleged against the petitioner is serious as he is indulged in illegal activity.

According to learned State counsel, the Police has conducted fair and proper



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investigation and after completion of the same, final report under Section 173 of Cr.P.C., 1973 was presented by the Police. Charges were framed on 30.04.2016 and the prosecution evidence is ongoing. Moreover, it has been stated that the learned Court below followed the procedure as laid-down under Section 82 of the Cr.P.C., 1973 in letter and spirit and no discrepancy whatsoever is forthcoming from the records of the case.

4. I have heard the learned counsel for the rival parties and carefully perused the record of the case.

5. A perusal of the impugned order dated 12.06.2023 (Annexure P-6), passed by the learned Chief Judicial Magistrate, show that on the basis of the report forwarded by the serving official, it was observed that the proclamation issued against the present petitioner has already been effected on 08.05.2023 and consequent to the petitioner's non-appearance on the concerned date recorded a satisfaction to the effect that the petitioner is absconding. Accordingly, the petitioner was declared proclaimed offender.

6. I find the course adopted by the Judicial Magistrate, as antithesis to the provisions of Section 82 of the Code of Criminal Procedure, 1973. The learned Judicial Magistrate has committed illegality by issuing the said proclamation under Section 82 of the Criminal Procedure Code, 1973, without complying the mandatory requirements of law. Hence, the same is not sustainable in law and continuation of the same will amount to abuse of process of law. Section 82 of the Criminal Procedure Code, 1973 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: -

(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 Sections 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 sub-section (1).]”

7. A coordinate Bench of this Court while dealing with invocation of the provision of Section 82 of the Code of Criminal Procedure, against an accused in the case of ‘**Sonu v. State of Haryana, 2021(1) RCR (Criminal) 319**’, held as under:

“9. The essential requirements of section 82 of the Cr.P.C., 1973 for issuance and publication of proclamation against an absconder and



declaring him as proclaimed person/offender 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. (See Rohit Kumar v. State of Delhi: 2008 CrI. J. 2561).

(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., 1973. (See Rohit Kumar v. State of Delhi : 2008 CrI. J. 2561).

(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. (See Bishundayal Mahton and others v. Emperor : AIR 1943 Patna 366 and Devender Singh Negi v. State of U.P. : 1994 CrI LJ (Allahabad HC) 1783).

(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 than 30 clear days from the date of issuance and publication of the proclamation. (See Gurappa Gugal and others v. State of Mysore : 1969 CriLJ 826 and Shokat Ali v. State of Haryana : 2020(2) RCR (CRIMINAL) 339).

(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. (See Dilbagh Singh v. State of Punjab (P&H) : 2015 (8) RCR (CRIMINAL) 166 and Ashok Kumar v. State of Haryana and another : 2013 (4) RCR (CRIMINAL) 550)

(vi) The Proclamation has to be published in the manner laid down in section 82(2) of the Cr.P.C., 1973. 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., 1973 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. (See Pawan Kumar Gupta v. The State of W.B. : 1973 CriLJ 1368). 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. (See Birad Dan v. State: 1958 CriLJ 965).

(viii) The Court issuing the proclamation has to make a statement in writing in its order that the proclamation was duly published on a specified day in a manner specified in section 82(2)(i) of the Cr.P.C., 1973. 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. (See Birad Dan v. State: 1958 CriLJ 965).

(xi) The conditions specified in section 82(2) of the Cr.P.C., 1973 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. (See Devendra Singh Negi alias Debu v. State of U.P. and another: 1994 CriLJ 1783 and Pal Singh v. The State: 1955 CriLJ 318)."

8. It is pertinent to mention that by now it is a settled principle of law that the Court which issues the proclamation under Section 82 of Cr.P.C., must record its satisfaction that the accused in respect of whom the proclamation is being made, is absconding or concealing himself to evade his arrest. The predominant requirement for invocation of provisions of

Section 82 of the Code of Criminal Procedure is clearly lacking in the

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present case. Perusal of order dated 06.04.2023 passed by the Judicial Magistrate shows that no satisfaction has been recorded while issuing the proclamation that the accused-petitioner has absconded or is concealing himself so that warrants of arrest against him cannot be executed. There was no material present before the Judicial Magistrate to record such a satisfaction. Rather, the case put forth by the petitioner before this Court, that he was never served with any warrants before issuance of proclamation against him stands fortified upon perusal of order dated 06.04.2023.

9. Strangely the impugned order dated 12.06.2023 passed by the Chief Judicial Magistrate, declaring the petitioner as proclaimed offender has relied upon the statement of the serving official to hold that the proclamation issued against the petitioner has been effected. A perusal of the order dated 08.05.2023 shows that the serving official appeared before the Court and made a statement that on 15.04.2023, he visited the house of the petitioner to serve the arrest warrant issued against the petitioner at his given address in the case but he was not found there. He had pasted one copy of proclamation outside the house of the accused and one copy on the notice board of the Court. But the Judicial Magistrate while passing the impugned order declaring the petitioner as proclaimed offender in the case has been totally oblivious of said service report of warrants by the police. As was enunciated in para 9 (vi) of the judgment in the case of **Sonu** (supra), the proclamation has to be published in the manner laid down in section 82(2) of the Cr.P.C., 1973. 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

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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.

10. The provisions of Section 82 of the Code of Criminal Procedure having serious ramifications qua the right of the accused concerning his presence in the criminal trial proceedings ought not be and cannot be invoked in casual and cavalier manner. The requirement of recording of satisfaction, that the accused has absconded or is concealing himself so that warrant of his arrest cannot be executed, as embodied in Section 82 of the Code of Criminal Procedure, is to be scrupulously complied with based on relevant material available on record of the case in that regard. Non-adherence to said requirement while declaring the accused as proclaimed offender vitiates the proclamation proceedings initiated against the accused.

10.1. Furthermore, vide order dated 13.03.2024 the petitioner has already entered appearance and has been enlarged on bail by the Court below whereinafter the trial is proceeding. Thus, no useful purpose would be served by keeping the criminal proceedings pending against the petitioner. Thus, it would be an appropriate case for exercise of powers under Section 482 of Cr.P.C. and to bring to an end the criminal proceedings initiated in the light of the order dated 12.06.2023 against the petitioner.

11. In view of the above findings, in the entirety of facts and circumstances of the present case, the present petition is partly allowed and the order dated 12.06.2023 (Annexure P-6) passed by the Chief Judicial Magistrate, Kurukshetra in case No.CHI/305/2016 in FIR No.55 of 2016 dated 04.02.2016 registered at Police Station Thanesar Sadar, District



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Kurukshetra, declaring the petitioner as proclaimed offender and the consequent criminal proceedings initiated against the petitioner is quashed.

12. Pending application(s), if any, shall also stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

January 15, 2025
Ajay

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