

2025:PHHC:033815



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

**CRM M-38660 of 2022
Date of Decision: 05.03.2025**

Sharanjeet Kaur @ Sharanjit Kaur ... Petitioner

Versus

State of Punjab ... Respondents

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

Present : Mr. Ramnish Puri, Advocate, for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

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 02.01.2014 (Annexure P-1) passed by the Court of Additional Chief Judicial Magistrate, Amritsar, whereby, the petitioner has been declared as proclaimed person. A further prayer has been made to quash the FIR No. 41 dated 05.04.2019 under Section 174-A IPC registered at Police Station Kathu Nangal, District Amritsar (Annexure P-2) and charge sheet under Section 173 Cr.P.C. dated 09.07.2021 (Annexure P-3) and all consequential proceedings arising therefrom.

2. Learned counsel for the petitioner contends that the petitioner was falsely involved in a FIR No. 17 dated 03.04.2012

under Section 420 IPC registered at Police Station Kathu Nangal and was not aware of the proceedings arising out of the said FIR. However, the trial Court vide order dated 17.09.2013 observed that the petitioner/accused has not been served in the case and the non-bailable warrants of arrest may be issued for 30.09.2013. Again on 30.09.2013, the Court of ACJM, Amritsar, observed that the accused was absconding or concealing to avoid of execution of warrants of arrest and proclamation of the petitioner was ordered to be issued for 28.10.2013. On 28.10.2013, the proclamation against the petitioner was received back duly affected on 28.10.2013 itself. Since, the statutory period of 30 days for appearance of the petitioner/accused was yet to elapse, consequently, the case was adjourned to 19.12.2013 for awaiting the appearance of the petitioner. Again, on 19.12.2013, the case was adjourned to 02.01.2014 for awaiting the presence of the accused as the 30 days stipulated period had not yet expired. On 02.01.2014, the petitioner was declared as proclaimed person in terms of Section 82(1) of Cr.P.C. Further in compliance of order dated 02.01.2014 (Annexure P-1), the trial Court also ordered the registration of the FIR under Section 174-A IPC against the petitioner and, accordingly, FIR No. 41 dated 05.04.2019 under Section 174-A, Police Station Kathu Nangal (Annexure P-2) was registered against the petitioner illegally. Now, the police has presented a challan (Annexure P-3) and all proceedings arising out of

the FIR (Annexure P-2) and challan (Annexure P-3) are required to be set-aside by this Court.

3. 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.

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

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, this Court has no hesitation to hold that the mandatory provisions of Section 82 of Cr.P.C. have not been complied by the trial Court. The repeated adjournments by the trial Court to comply with the statutory period of 30 days can never be construed as sufficient compliance of provisions of Section 82 of 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. Consequently, the petition is allowed. The impugned dated 02.01.2014 (Annexure P-1) passed by the Court of Additional Chief Judicial Magistrate, Amritsar; FIR No. 41 dated 05.04.2019 under Section 174-A IPC registered at Police Station Kathu Nangal, District Amritsar (Annexure P-2); charge sheet under Section 173 Cr.P.C. dated 09.07.2021 (Annexure P-3) and all subsequent proceedings arising therefrom are ordered to be quashed qua the petitioner only.

9. 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.

05.03.2025

(N.S.SHEKHAWAT)

amit rana

JUDGE

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