

2025:PHHC:026131



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CRM M-52079 of 2021
Date of Decision: 21.02.2025

Kuldeep Singh

...Petitioner

Versus

State of Punjab and another

... Respondents

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

Present : Mr. Vivek K. Thakur, Advocate, for the petitioner.

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

Mr. Mandeep S. Sachdev, Advocate,
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 09.08.2018 (Annexure P-6) passed by the Court of Additional Sessions Judge, Jalandhar in Criminal Complaint No. 9 dated 18.03.2015 titled as "***Malkiat Singh Vs. Surinder Singh and others***", whereby, the petitioner has been declared as a proclaimed offender.

2. Learned counsel for the petitioner contends that one FIR No. 52 dated 25.05.2012 under Sections 302, 341, 323, 324, 506, 148 and 149 of IPC, Police Station Lohian, District Jalandhar, was registered against 10 accused including the respondent No. 2/complainant in the present case. The respondent No. 2/complainant and other accused were tried by the Court of Additional Sessions Judge, Jalandhar and were ordered to be

convicted. As a counter blast to the aforementioned FIR, the respondent No. 2 filed a criminal complaint (Annexure P-1) against the present petitioner and others and vide the summoning order dated 04.08.2016, the Court of Judicial Magistrate 1st Class, Nakordar, summoned the petitioner and other accused to face trial under Sections 323, 427, 452, 148 and 149 IPC. Learned counsel submits that at the time when the summoning order was passed by the trial Court, the petitioner was not in India and the summoning order was passed at his back. Even thereafter, most of the time, the petitioner was residing abroad and no efforts were made to serve him personally. Ultimately, vide order dated 21.02.2018, the Court of Additional Sessions Judge, Jalandhar, observed that the petitioner cannot be served through the warrants and he was ordered to be summoned through proclamation under Section 82/83 of Cr.P.C. and directed to appear on 30.03.2018. In compliance of the order dated 21.02.2018, the proclamation was issued on 09.03.2018 and Gulzari Lal, Constable Police Station Lohiya went to the village of the petitioner and published the proclamation. On 23.03.2018, the statement of serving constable was recorded and he stated that he had gone to the house of the petitioner but the petitioner was not found there. Thereafter, the proclamation was affixed on the door of his house, second copy was affixed at the common place in the village and third copy was affixed on the notice board of the Court. However, it is apparent from his statement (Annexure P-5) that the

proclamation was not read publicly at some conspicuous place of the village. Learned counsel for the petitioner further contends that the petitioner was not declared as proclaimed offender on 30.03.2018, i.e., the date fixed for his appearance before the Court and the case was adjourned to 18.04.2018. Again, the case was taken up on 18.04.2018, 17.05.2018, 31.05.2018 and 05.07.2018, but the petitioner was not declared as proclaimed offender. Ultimately, vide order dated 09.08.2018, the petitioner was declared as proclaimed offender. Learned counsel for the petitioner contends that vide order dated 21.02.2018, the proclamation was issued for appearance of the petitioner on 30.03.2018 and the proclamation was actually published on 23.03.2018 for appearance of the petitioner on 30.03.2018. Thus, the statutory period of 30 days for appearance of the accused, was not provided to the present petitioner, which is in violation of Section 82(1) Cr.P.C. Moreover, the proclamation was not read at a public place in the village of the petitioner, which is also violation of the provisions of Section 82 Cr.P.C.

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. 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”.

5. 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”.

6. In the present case also, this Court has no hesitation to hold that the mandatory provisions of Section 82 Cr.P.C. have not been complied by the trial Court. Vide order dated 21.02.2018, the proclamation was issued for appearance of the petitioner on 30.03.2018. However, the proclamation was published on 23.03.2018 for the appearance of the petitioner on 30.03.2018. Thereafter, the case was adjourned to 18.04.2018, 17.05.2018, 31.05.2018, 05.07.2018 and 25.07.2018 but no proclamation was issued for such dates and even such adjournments cannot be construed as sufficient compliance of the provisions of Section 82(1) Cr.P.C. Still further, it was mandatory for the serving official to read the proclamation publicly in some conspicuous place of the village, where the petitioner was residing ordinarily. 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.

7. As a consequence, the impugned order dated 09.08.2018 (Annexure P-6) passed by the Court of Additional District and Sessions Judge, Jalandhar and all subsequent proceedings arising therefrom are ordered to be quashed qua the petitioner only.

8. The petition stands allowed, accordingly.

21.02.2025

(N.S.SHEKHAWAT)

amit rana

JUDGE

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