



CRM-M-53994-2024 (O&M)

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

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CRM-M-53994-2024 (O&M)
Date of Decision: 08.01.2025

Daljit Kaur @ Pooja @ Sonia and another**....Petitioners****Versus****State of Punjab****....Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Anurag Arora, Advocate
for the petitioners.

Ms. Swati Batra, DAG, Punjab.

Manisha Batra, J. (Oral)**CRM-50271-2024**

This is an application for placing on record the documents as
Annexures P-13 and P-14.

Application is allowed, as prayed for.

Main Case

1. Prayer in the present petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) is for quashing of the order dated 30.08.2024 (Annexure P-12) passed by the Court of learned Judicial Magistrate Ist Class, Jalandhar in case titled as '***State Vs. Sukhpreet Singh and others***', arising out of FIR No.95 dated 23.08.2021 registered under Sections 420, 120-B of IPC and Section 13 of the Punjab Travel Professional Act, 2014, at Police Station Navi Baradari, District



Police Commissionerate Jalandhar, whereby, the petitioners had been declared proclaimed persons.

2. The aforementioned FIR had been registered on the complaint lodged by the complainant-Kewal Krishan on the allegations that the present petitioners had induced his daughter-Komal to settle at Muscat by alluring her to provide job and accommodation to her in that country. After alluring her, they had taken her from India to Muscat on the pretext of providing a job in beauty parlour but she was sold to work in a Sheikh's house by way of human trafficking. On coming to know about this fact, the complainant had reported the matter to the police but his daughter had not been brought back to India despite the fact that the petitioners had taken an amount of Rs.55,000/- more from him for bringing his daughter back. Therefore, he prayed for taking action in the matter. After registration of FIR, investigation proceedings were initiated and after completion of the same, challan was presented in the Court. The presence of the petitioners could not be secured. Ultimately, proceedings under Section 82 of the Code of Criminal Procedure were initiated against them and vide order dated 30.08.2024, they were declared proclaimed persons.

3. It is argued by learned counsel for the petitioners that they have been falsely implicated in this case. They were not aware of registration of any FIR. They never received any notice of the same. They were residing in Dubai at the time of registration of FIR. They have been declared proclaimed persons without following the proper procedure prescribed under Section 82 of Cr.P.C. With these broad submissions, it is urged that the impugned order is liable to be set aside.



4. Learned State counsel, who has advance notice of the petition, on the other hand, has argued that the petitioners intentionally avoided their appearance before the learned trial Court despite having knowledge of the registration of the FIR and filing of challan against them and were rightly declared proclaimed persons. Therefore, it is urged that they do not deserve to be granted any relief.

5. I have heard learned counsel for the parties at considerable length and have gone through the record.

6. On going due deliberations to the contentions as raised by both the sides and on overall perusal of the orders passed by the learned trial Court, I am of the considered opinion that the impugned order suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

7. At the outset, it would be relevant to refer to the provision of Section 82 Cr.P.C., which provides for publication of proclamation against the person absconding. It 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 section 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 subsection (1).”

8. The well settled proposition of law as culled out from various pronouncements of Hon’ble Apex Court on the relevant point 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.

(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.

(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.

(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.

(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.

(vi) The Proclamation has to be published in the manner laid down in Section 82 (2) of the Cr.P.C.. 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 subclauses (a)- (c) in Section 82 (2)(i) of the Cr.P.C. 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. 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.

(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.. 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.

(ix) The conditions specified in Section 82(2) of the Cr.P.C. 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".

9. On applying the above discussion position of law to the peculiar facts and circumstances of the present case, it has been noticed that initially summons and then non-bailable warrants were issued against the petitioners which were received back unexecuted. Even it was reported that petitioner No.2 was residing in Dubai. The proclamation was ordered to be issued against the petitioners vide order dated 01.12.2023 (Annexure P-8). While passing this order, the learned trial Magistrate is, however, not shown to have recorded a proper satisfaction to the effect that the petitioners had absconded or had been concealing themselves so that the warrant of arrest could not be executed against them. As such, there was violation of



mandatory provisions of Section 82(1) of the Code of Criminal Procedure which rendered the proceedings so initiated as illegal. In this context, reliance can be placed upon the observations made in '**Rohit Kumar Vs. State of Delhi**' 2008 Criminal Law Journal 2561.

10. Further, it has also come on record that petitioner No. 2 was residing in Dubai but no efforts whatsoever were made by the Court to effect service upon petitioner No. 2 at his ordinary place of residence in Dubai. No letter to Ministry of External Affairs qua service of notice/warrants/proclamation against petitioner No. 2 is shown to have been written by the Court concerned. There is also nothing on record to show that before passing the impugned order, the procedure prescribed under Section 105 of Cr.P.C. was followed by the learned trial Court. As such, it can reasonably be presumed that the process never reached petitioner No. 2 and hence, he had no occasion to conceal himself. As such, the action of the learned trial Court by switching to the proclamation proceedings under Section 82 of Cr.P.C. can itself be stated to be bad in the eyes of law. Reliance in this context can be placed upon **Manjit Kaur vs. State of Punjab : 2013 SCC Online (P&H) 8663**.

11. Accordingly, the present petition is allowed and the impugned order dated 30.08.2024 (Annexure P-12), passed by the Judicial Magistrate First Class, Jalandhar in case titled as **State vs. Sukhpreet Singh and others**, arising out of FIR No.95 dated 23.08.2021, registered under Sections 420, 120-B of IPC and Section 13 of the Punjab Travel Professional Act, 2014, at Police Station Navi Baradari, District Police Commissionerate Jalandhar, whereby the petitioners had been declared proclaimed persons is hereby



quashed along with all the subsequent proceedings.

12. However, the petitioners are directed to surrender before the Court concerned within a period of four weeks, subject to order for grant of anticipatory bail, if any passed on their petition to be filed under Section 482 of BNSS. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioners shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court in accordance with law.

13. Needless to observe that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall be bound to dispose of the same expeditiously and that nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

14. Till the appearance of the petitioners before the learned trial Court, their arrest shall remain stayed.

15. It is made clear that in case the petitioners fail to appear before the learned trial Court within a period of four weeks from today, this petition shall be deemed to be dismissed.

16. Since the main petition stands disposed of, pending application(s), if any, shall also be treated as disposed of.

08.01.2025

D.Bansal

(MANISHA BATRA)
JUDGE

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No