

2025:PHHC:026191



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CRM M-56811 of 2024

Date of Decision: 21.02.2025

Arjun Kumar

...Petitioner

Versus

State of Haryana

... Respondent

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

Present : Mr. Manoj Kumar Pundir, Advocate, for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 528 of BNSS with a prayer to quash the order dated 18.01.2023 (Annexure P-9) passed by the Court of Additional Chief Judicial Magistrate, Yamuna Nagar at Jagadhri in case FIR No. 002 dated 01.01.2019 under Sections 25 and 54 of the Arms Act, Police Station Jagadhri City, District Yamuna Nagar, whereby, the petitioner has been declared as proclaimed person.

2. Learned counsel for the petitioner contends that the petitioner was falsely involved in a case FIR No. 002 dated 01.01.2019 under Sections 25 and 54 of the Arms Act, Police Station Jagadhri City, District Yamuna Nagar (Annexure P-1). Thereafter, he was arrested on 01.01.2019 and was granted the concession of bail by the trial Court. During the course of trial, on 07.10.2022, there was a

death in the family of the petitioner and he could not appear before the Court. Consequently, he informed his counsel before the trial Court, but he was wrongly guided by his counsel and he was informed that there was no requirement for him to come personally before the Court and the counsel would inform him as and when his presence would be required. Learned counsel further contends that the petitioner was living in Dehradun and the summons/warrants were sent at a wrong address by the Court. Thereafter, vide order dated 19.10.2022, the proclamation under Section 82 Cr.P.C. was issued against the petitioner for 01.12.2022. On 01.12.2022, the Presiding Officer was not holding the Court and the case was adjourned to 18.01.2023 for the purpose already fixed. In compliance of the said order, a proclamation was issued on 06.12.2022 for appearance of the petitioner on 18.01.2023. On 18.01.2023, the statement of serving official ASI Raj Kumar was recorded by the trial Court. He clearly stated that he had gone to the address of the petitioner and an announcement (Munadi) was got done. He pasted one copy of the proclamation at a public place in the village, second copy was pasted in the Court premises and third copy was presented to the Court for further proceedings. It is apparent that he had not pasted the copy of the proclamation on the house, in which the petitioner was residing nor the proclamation was read publicly in some conspicuous place of the village. Thus, the mandatory provisions of Section 82 Cr.P.C. have been violated by him and the impugned order is legally unsustainable.

3. On the other hand, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner on the ground that the petitioner was intentionally avoiding to appear before the trial Court and does not deserve any leniency. She further submits that the petitioner was aware of the pendency of the proceedings before the trial Court, but still choose not to appear before the trial Court and the proceedings initiated against him in the impugned order warrant no interference.

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

5. After hearing counsel for the parties, I find sufficient force in the submissions made by the learned counsel for the petitioner. From a perusal of the statement of the serving official (Annexure P-7), it is apparent that the proclamation was not publicly read in some conspicuous place of the village, where the petitioner was ordinarily residing, which is in violation of Section 82(2)(i)(a) of Cr.P.C. Still further, as per the provisions of Section 82(2)(i)(b) of Cr.P.C., a copy of the proclamation has to be affixed to some conspicuous part of the house, in which the accused ordinarily resides. However, in the present case, the copy of the proclamation was not affixed at the house of the petitioner. In fact, the provisions of Section 82 Cr.P.C. are mandatory in nature and have to be complied with in true spirit. Thus, the mandatory procedure is provided under Section 82(2)(i)(a) and (b) of Cr.P.C. had not been complied with and

as a consequence, the impugned order dated 18.01.2023 (Annexure P-9) is liable to be set aside.

6. Thus, the impugned dated 18.01.2018 (Annexure P-9) passed by the Additional Chief Judicial Magistrate, Yamuna Nagar, and all subsequent proceedings arising therefrom are ordered to be quashed qua the petitioner only.

7. Consequently, the petitioner is permitted to surrender before the learned trial Court/Area Magistrate/Duty Magistrate within a period of four 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 four weeks from today, the present petition shall be deemed to be dismissed by this Court.

8. The petition is disposed off in above terms.

21.02.2025

(N.S.SHEKHAWAT)

amit rana

JUDGE

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