



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58488-2024
Date of Decision:13.01.2025

Krishan Kumar @ Krishan Kumar Chaudhary ...Petitioner

Vs.

State of Punjab ...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Yaseen Sethi, Advocate
for the petitioner.

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

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to quash the impugned order dated 20.07.2022 (Annexure P-5) passed by the Court of Judicial Magistrate Ist Class, Ludhiana, whereby the petitioner was declared as a proclaimed person and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner contends that the petitioner was falsely involved in FIR No.210, dated 12.08.2017, under Sections 63 and 66 of Copy Right Act and Section 103,104 of Trademark Act, registered at Police Station Division No.7, District-Ludhiana, Punjab. The petitioner was arrested on 12.08.2017 and was released on bail by the police officials on the same day. Thereafter, the final report under Section 173 Cr.P.C was presented before the Court of Judicial Magistrate Ist Class, Ludhiana on 03.04.2019 and notices

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were issued for the appearance of the petitioner. He further contends that the neither summons nor the warrants were served on the present petitioner. Ultimately, vide order dated 12.06.2019, the Court of Judicial Magistrate Ist Class, Ludhiana observed that the notice issued to the petitioner had been received back unserved and he should be summoned through non-bailable warrants for 22.07.2019. Thereafter, the non-bailable warrants were issued against the petitioner, but the petitioner was never served by any official. Ultimately, vide order dated 07.04.2022, the proclamation under Section 82 Cr.P.C was issued against the present petitioner for 15.06.2022. On 15.06.2022, the serving official, HC Avtar Singh appeared before the Trial Court and made a statement that the proclamation under Section 82 Cr.P.C issued against the petitioner was effected on 13.06.2022. Since, the period of 30 days had not elapsed till 13.06.2022, the case was adjourned to 20.07.2022, awaiting the presence of the petitioner. Ultimately, vide order dated 20.07.2022 (Annexure P-5), the petitioner was declared as a proclaimed person by the Trial Court. Learned counsel further contends that even the Trial Court had realized that the statutory period of 30 days had not lapsed after the publication and the case was adjourned to 20.07.2022, only for the purpose of fulfilling the requirement of 30 days as provided under Section 82 Cr.P.C. However, the said adjournment does not fulfil the statutory requirement of Section 82 Cr.P.C and the petitioner was wrongly declared as proclaimed person.

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

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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 :-

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**“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.

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6. In the present case also, this Court has no hesitation to hold that the mandatory provisions of Section 82 of the Cr.P.C have not been complied by the Trial Court. Vide order dated 07.04.2022, the proclamation was issued against the petitioner for 15.06.2022. However, on 15.06.2022, the Court noticed that the proclamation under Section 82 Cr.P.C was published against the petitioner on 13.06.2022 and the case was ordered to be adjourned to 20.07.2022. Thus, the statutory notice of 30 days was not granted to the petitioner and the adjournment to 20.07.2022, can never be construed as sufficient compliance of the provision of Section 82 (1) of the Cr. P.C. 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 person. Thus, the impugned order dated 20.07.2022 (Annexure P-5), passed by the Court of Judicial Magistrate Ist Class, Ludhiana is illegally and unsustainable and is liable to be quashed by this Court.

7. Since, the matter had remained pending before the Trial Court, no purpose would be served by sending the petitioner behind the bars after such a long period. Consequently, the petitioner is permitted to surrender before the 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

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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.

8. The petition stands allowed in above terms.

(N.S.SHEKHAWAT)
JUDGE

13.01.2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No