



CRM-M-65285-2024 (O&M)

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

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CRM-M-65285-2024(O&M)

Date of decision : 07.01.2025

Davinder Singh

..... Petitioner

VERSUS

State of Punjab and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Vipin Kumar Sharma, Advocate, for the petitioner.

KIRTI SINGH, J. (Oral)

The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 for quashing the impugned order dated 03.01.2019 (Annexure P-6), whereby the petitioner has been declared proclaimed offender in case bearing FIR No.45 dated 30.06.2014, under Sections 406 and 498-A IPC, registered at Police Station Women Cell, Jalandhar, District Jalandhar City.

2. Learned counsel for the petitioner prayed for setting aside the order dated 03.01.2019 (Annexure P-6) whereby the petitioner was declared as proclaimed offender. The prosecution filed application under Section 319 of Cr.P.C. upon which the petitioner was summoned. Due to his non appearance, non bailable warrants were issued which were received back unexecuted. Vide order dated 05.11.2018, the petitioner was ordered to be summoned through proclamation under Section 82 Cr.P.C., for 05.12.2018. He while referring to proclamation notice dated 22.11.2018 (Annexure P-3) contends that the petitioner was directed to appear before the trial Court on



05.12.2018 and he was not granted the mandatory 30 days period in compliance to Section 82(1) Cr.P.C. Learned Trial Court, on the basis of proclamation has declared the petitioner as proclaimed offender vide order dated 03.01.2019. The orders have been passed without following the due procedure and are not maintainable and hence liable to be quashed. Hence, there are lacunas in the procedure followed by the learned Court.

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

4. A perusal of proclamation notice reveals that the notice was issued on 22.11.2018, whereby, the petitioner was directed to appear on 05.12.2018, thus, the petitioner was not granted 30 days mandatory period in compliance of Section 82 Cr.P.C.

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 the Cr.P.C., have not been complied by the trial Court. 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.

8. From the above referred discussion, it is evident that the trial Court had wrongly declared the petitioner as proclaimed offender and the impugned order dated 03.01.2019 (Annexure P-6) is illegal and unsustainable and liable to be quashed. Accordingly, the prayer qua setting aside of order dated 03.01.2019 (Annexure P-6) is allowed **subject to payment of Rs.10,000/- to be deposited in Poor Patient Welfare Fund, PGIMER, Chandigarh. Ordered accordingly.**

9. Pending application(s), if any, shall also be disposed of accordingly.

(KIRTI SINGH)
JUDGE

07.01.2025
Kapil

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