

CRM M-62240 of 2024

2025:PHHC:012275



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

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**CRM M-62240 of 2024
Date of Decision: 27.01.2025**

Razak Khan @ Rajak Khan

...Petitioner

Vs.

State of Punjab

...Respondent

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

Present : Mr. A.S. Nirmaan, Advocate, for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 of Cr.P.C. with a prayer to quash the impugned order dated 20.05.2023 (Annexure P-8) passed by the Court of Judicial Magistrate 1st Class, Patiala in case bearing FIR No. 71 dated 12.08.2021 registered under Sections 279, 337, 338, 427 and 304-A IPC registered at Police Station Bakshiwala, District Patiala (Annexure P-1).

2. Learned counsel for the petitioner contends that the petitioner was not initially named in the FIR (Annexure P-1) and the FIR was registered against unknown persons. Rather, the petitioner had no concern with the allegations levelled by the complainant and

vide order dated 01.10.2022, the trial Court had issued nonailable warrants against the petitioner for 31.10.2022. The petitioner was never served through the warrants and, ultimately, vide order dated 02.01.2023, the trial Court ordered for issuance of proclamation under Section 82 Cr.P.C. against the present petitioner. On 03.02.2023, the proclamation issued against the petitioner was received back duly executed, but since the period of 30 days had not elapsed, the case was adjourned to 10.03.2023. Again on 10.03.2023, a fresh proclamation was issued for 20.05.2023. On 20.05.2023, the proclamation issued against the petitioner was not received and again it was ordered to be issued for 31.07.2023. However, on 20.05.2023, itself, the trial Court again took up the file and observed that the proclamation issued against the petitioner was received back duly effected. A statement of serving official ASI Harpal Singh was recorded regarding the execution of the proclamation. He stated that he had affixed a copy of proclamation on the main gate of the house of the accused, one copy at a thoroughfare and another copy had been affixed on the notice board of the Court. It was observed that since the statutory period of 30 days had elapsed after the execution of the proclamation, consequently, the petitioner was declared as proclaimed person.

3. Learned counsel further contends that as per the provisions of Section 82(1) of Cr.P.C., the executing officer was under a legal obligation to read out the proclamation in some conspicuous

place. However, the executing officer had admittedly not read the proclamation in some conspicuous place of the village, where, the petitioner was allegedly residing and the impugned order is liable to be set aside only on this ground.

4. A short reply by way of an affidavit of the Deputy Superintendent of Police, City 2, District Patiala has been filed on behalf of the respondent-State and the same is taken on record.

5. Learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner by alleging that in the present case, the prosecution had sufficiently complied with the mandatory provisions of Section 82 of the Cr.P.C, it was apparent that the proclamation was affixed at a conspicuous place as the house of the accused was found locked and there was sufficient publication of the proclamation and the provisions of Section 82 Cr.P.C were complied with. Apart from that, regular raids were conducted by the local police in order to apprehend the petitioner, but he was intentionally hiding himself and could not be arrested, despite, strenuous efforts made by the local police and finding no further alternative the Court was constrained to initiate the proceedings under Section 82 of the Cr. P.C. Learned counsel further vehemently argued that the petitioner was well aware of the PO proceedings and intentionally he evaded the process of law. Consequently, the petitioner is no entitled to any relief from this Court.

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

7. In the present case, the arguments raised by learned counsel for the parties are centered around the mandatory provisions of Section 82 of Cr.P.C, which is reproduced as follows:-

“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.”

However, by way of Section 12 of Act No.25 of 2005, subsections (4) and (5) were also inserted in Section 82 Cr.P.C. w.e.f. 23.06.2006 vide notification No.S.O.923(E) dated 21.06.2006, which reads as under: “[4] Where a proclamation published under subsection (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 sub-section (1).]”

8. The only submission raised on behalf of learned counsel for the petitioner is that the proclamation has to be published in the manner laid down under Section 82 (2) Cr. P.C in the publication, the proclamation has to be read publicly first in some conspicuous place of the town or the village in which the accused ordinarily resides and then the same has to be affixed to some conspicuous part of the house or the 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 sub-clauses (a)-(c) in Section 82 (2) (i) of Cr.PC are conjunctive and disjunctive, which means that there would be no valid publication of 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. It has been held by this Court in **CRM-M-25921-2020, titled as "Harinder Singh Vs. State of Haryana and Anr, decided on 22.09.2020.**

9. From a perusal of the facts of the present case, it is apparent that the proclamation has not been published in the manner as laid down under Section 82 of Cr.P.C. From the perusal of the statement made by ASI Harpal Singh Executing Official, it is apparent that he had pasted one copy outside a public place and had pasted one copy on the notice board of the Court and another copy was affixed on the house of the petitioner. However, the proclamation was not

read publicly in some conspicuous place in the village, where the accused ordinarily resided. Thus, due to non compliance of mandatory provisions of law, the impugned order dated 20.05.2023 (Annexure P-8), whereby, the petitioner was declared as proclaimed person is set aside.

10. In the present case, the trial arising out of FIR No.71 dated 12.08.2021 under Sections 279, 337, 338, 427 and 304-A IPC registered at Police Station Bakshiwala, District Patiala, Punjab (Annexure P-1) is stated to be pending before the trial Court. Consequently, the petitioner is directed to appear before the trial Court/Area Magistrate/Duty Magistrate within a period of 06 weeks from today and on his appearance, 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 concerned Court may also be at liberty to impose such conditions as it may deem fit and appropriate in the facts and circumstances of the present case. In case, the petitioner does not surrender within a period of 06 weeks as mentioned above, his petition shall be deemed to be dismissed.

11. The petition is disposed off in above terms.

27.01.2025

amit rana

Whether reasoned/speaking
Whether reportable

(N.S.SHEKHAWAT)

JUDGE

: Yes/No
: Yes/No