



219 (2)

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

**CRM-M-11252-2025
Date of decision :01.04.2025**

RAHUL KAPOOR @ RAHUL KUMAR & OTHERS

..... PETITIONERS

VERSUS

STATE OF PUNJAB

..... RESPONDENT

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

Present :- Mr. Lakshay Bector, Advocate
for the petitioners.

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

N. S. SHEKHAWAT, J. (ORAL)

1. The petitioners have filed the present petition under Section 528 of BNSS with a prayer to quash the order dated 07.07.2023 (Annexure P-5) passed by the Court of Sub Divisional Judicial Magistrate, Payal, whereby the petitioners have been declared as proclaimed offenders.

2. Learned counsel for the petitioners contends that a false FIR No.0020 dated 06.02.2023 under Sections 302/34 IPC, Police Station Doraha, District Khanna (Annexure P-1) was ordered to be registered against the petitioners and others. He further contends that after the registration of the FIR, complainant Yogesh Singla and his wife Tanya had verified the facts regarding



death of their family members and it was revealed that the petitioners had not participated in the alleged occurrence in any manner. Even they had moved an application to SSP to find out the real accused and to exonerate the petitioners, who had no concern with the crime. He further contends that even it has been shown wrongly that summons/warrants were issued for the service of the petitioners but the petitioners were not aware of such proceedings and were never served by any one. Learned counsel further submits that vide order dated 27.04.2023, the Court of SDJM, Payal, observed that the non-bailable warrants issued against the petitioners had not received back executed and as such, the proclamation proceedings under Sections 82/83 Cr.P.C. may be initiated against the petitioners/accused and proclamation was issued for 31.05.2023. He further contends that in compliance of order dated 27.04.2023 passed by the Court of SDJM, Payal, serving official i.e. HC Charajnit Singh went to the house of the petitioners and it was found locked. As per his statements, Annexures P-10 to P-12 recorded by the trial Court on 31.05.2023, he had pasted the copy of the proclamation outside the house of the petitioners and the second copy of the proclamation was pasted at a conspicuous place at the village. However, neither he had read the proclamation in public in the village nor had pasted a copy of the proclamation on the notice board of the trial Court. He further contends that on the adjourned date i.e. 31.05.2023, the period of 30 days had not elapsed, consequently, the case was adjourned to 07.07.2023 for completing the statutory period of 30 days. Since the petitioners had not appeared on 07.07.2023, all the petitioners were declared as proclaimed offenders in the present case. He further submits that since the trial Court had not complied with the mandatory provi-



sions of Section 82 Cr.P.C. the impugned order is liable to be quashed by this Court.

3. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioners on the ground that the petitioners were very well aware of the registration of a criminal case against them and intentionally did not appear before the Investigating Officer as well as the trial Court.

4. Thus, after following the due process of law, all the petitioners have been declared as proclaimed offenders.

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

6. Section 82 Code of Criminal Procedure provides for issuance of proclamation and for declaring the accused as a proclaimed offender and the same has been reproduced below:-

“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).]”

As per the provisions of Section 82(2) Cr.P.C. the proclamation issued by a Court to be first read in a public place in the village, where such person, who is absconding, normally resides. Apart from that, it is also mandate that a copy of the proclamation has to be affixed to some conspicuous part of the house, where the person ordinarily resides and a copy of the proclamation has to be affixed to some conspicuous part of the Court house.



7. From a perusal of the statements Annexures P-10 to P-12, it is apparent that the proclamation was not read publicly in some conspicuous place of the village, where the petitioners were residing. Apart from that, a copy of the proclamation was not affixed to some conspicuous part of the Court. Thus, it is apparent that the mandatory provisions of Section 82(2) Cr.P.C. were not complied with and the impugned order dated 07.07.2023 (Annexure P-5) passed by the Court of Sub Divisional Judicial Magistrate, Payal, is liable to be quashed by this Court.

8. Apart from that, vide order dated 27.04.2023, the proclamation warrants were issued for the appearance of the petitioners for 31.05.2023, however, the proclamation in the present case was published on 14.05.2023, requiring the petitioners to appear before the trial Court on 31.05.2023. On 31.05.2023, the statutory period of 30 days had not expired, consequently, the trial Court had adjourned the case to 07.07.2023, when the petitioners were declared as proclaimed offenders. However, such adjournment by the trial Court does not fulfill the statutory requirements of Section 82 Cr.P.C., which clearly provides that while issuing a proclamation, the Court has to grant a specified period of not less than 30 days from the date of furnishing the proclamation.

9. Thus, it is absolutely clear that the Court of SDJM, Payal had not complied with the mandate of Section 82 Cr.P.C. and the impugned order dated 07.07.2023 (Annexure P-5) passed by the Court of Sub-Divisional Judicial Magistrate, Payal, is duly unsustainable.

10. In view of the above discussion, the impugned order dated 07.07.2023 (Annexure P-5) passed by the Court of Sub-Divisional Judicial



Magistrate, Payal and all subsequent proceedings arising therefrom are ordered to be quashed qua the petitioners only.

11. Consequently, the petitioners are permitted to surrender before the learned trial Court/Area Magistrate/Duty Magistrate within a period of 02 weeks from today and on their surrender, they shall be admitted to bail by the concerned Court on their furnishing bail bonds/surety bonds to the satisfaction of the concerned Court. The Court, which admits the petitioners to bail, shall also be at liberty to impose such reasonable conditions, as provided by law. In case, the petitioners do not surrender within a period of 02 weeks from today, the present petition shall be deemed to be dismissed by this Court.

12. The petition is disposed off in above terms.

01.04.2025

vipin

(N.S. SHEKHAWAT)

JUDGE

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