

2025:PHHC:016267



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

317

CRM M-62852 of 2024

Date of Decision: 30.01.2025

Nardeep Singh

... Petitioner

Versus

State of Union Territory and another

... Respondents

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

Present : Mr. Arun K. Kaunal, Advocate, for the petitioner.

Mr. J.S. Toor, Addl. P.P., U.T., Chandigarh.

Mr. R.S. Bains, Advocate and
Mr. Arpinder S. Sidhu, Advocate
for respondent No.2-complainant.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 528 of the BNSS with a prayer to quash the impugned order dated 17.09.2009 (Annexure P-6) passed by the Court of Judicial Magistrate 1st Class, Chandigarh, whereby, the petitioner has been declared as proclaimed offender in a case arising out of the FIR No. 126 dated 23.04.2008 under Sections 279, 337 and 338 of IPC registered at Police Station Sector 36, Chandigarh (Annexure P-1).

2. Learned counsel for the petitioner contends that a FIR No. 126 dated 23.04.2008 under Sections 279, 337 and 338 of IPC Police Station Sector 36, Chandigarh (Annexure P-1) was registered against the petitioner at the instance of respondent No. 2/complainant, who had alleged that while he was crossing the road divider of Sectors 51 and 52 Chandigarh on foot, he was hit by the motorcycle driven by the present petitioner, in a rash and negligent manner. The petitioner was arrested in the case and was granted the concession of bail. Thereafter, both the parties had entered into a compromise and the petitioner was under a bonafide belief that the entire legal proceedings had come to an end on the basis of the compromise between the parties. Under the misconceived belief, the petitioner left India on 03.07.2008 and went to Australia to pursue his further studies. Later on, even, the compromise was reduced into writing between the father of the petitioner and respondent No. 2 also. Learned counsel for the petitioner contends that rather the trial Court issued non-bailable warrants against the present petitioner, however, the petitioner was never served as he was abroad. Even no steps were taken by the complainant/prosecution to serve the petitioner through the Embassy in Australia. Ultimately, vide order dated 14.11.2008, the Court observed that the petitioner may be served by issuing proclamation under Section 82/83 of Cr.P.C, against accused for 05.01.2009. In pursuance to the order dated 14.11.2008, the

proclamation notice for the appearance of the petitioner was issued on 26.11.2008. Learned counsel further contends that in fact on 05.01.2009, it was holiday and the case was taken up on 06.01.2009. The trial Court observed that the proclamation was published on 12.12.2008 and since the statutory period of 30 days had not expired from the date of publication of proclamation, the case was adjourned to 12.01.2009 for completion of period of 30 days and for awaiting the presence of the accused, i.e., the petitioner. Ultimately, the matter was taken up on 10.01.2009, instead of 12.01.2009 as the Presiding Officer of the Court had to go out of station for some official work and the case was adjourned to 17.01.2009 for the purpose already fixed. Ultimately, vide the impugned order dated 17.01.2009, the trial Court declared the petitioner as proclaimed offender. Learned counsel for the petitioner further contends that vide order dated 14.11.2008, the proclamation was issued for the appearance of the petitioner on 05.01.2009. The proclamation was published on 12.12.2008 and the statutory period of 30 days had not expired on 06.01.2009. Consequently, the case was adjourned to 12.01.2009 and 17.01.2009. However, such adjournments do not fulfill the requirement of 30 days as provided under Section 82 of Cr.P.C.

3. On the other hand, learned State counsel assisted by learned counsel for the complainant 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 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 :-

“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”.

6. In the present case also, this Court has no hesitation to hold that the mandatory provisions of Section 82 of Cr.P.C. had not been complied by the trial Court. Vide order dated 14.11.2008, the proclamation notice was issued for appearance on 05.01.2009. On 05.01.2009, the Presiding Officer was not holding the Court and the case was taken up on 06.01.2009. The trial Court observed that the period of 30 days had not expired and the case was adjourned to

12.01.2009 and 17.01.2009, when the petitioner was ultimately declared as proclaimed offender. However, such further adjournments to complete the statutory period of 30 days can never be construed as sufficient compliance of the provisions of Section 82(1) Cr.P.C. Thus, in view of the mandatory provisions of Section 82 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 Cr.P.C., while declaring the petitioner as proclaimed offender.

7. As a consequence, the impugned order dated 17.09.2009 (Annexure P-6) passed by the Court of Judicial Magistrate 1st Class, Chandigarh and all subsequent proceedings arising therefrom are ordered to be quashed qua the petitioner.

8. In the present case, the matter remained pending before the trial Court for long and parties have already compromised the case, thus, no purpose will be served by sending the petitioner behind the bars after such a long period. Consequently, the petitioner is permitted to surrender before the learned 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 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.

9. The petition is disposed off in above terms.

30.01.2025

(N.S.SHEKHAWAT)

amit rana

JUDGE

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