



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

**CRM-M-19877-2018
Date of Decision: 25.02.2025**

HARJINDER SINGH ...Petitioner(s)

Vs.

PAWAN KUMAR AND ANOTHER ...Respondent(s)

CORAM : HON'BLE MR. JUSTICE H. S. GREWAL

Present: Mr. Kiran Kumar, Advocate,
for the petitioner.

Ms. Ravinder Kaur, Advocate for
Mr. Gurcharan Dass, Advocate
for respondent No.1.

Mr. Amandeep Singh Samra, AAG, Punjab.

H. S. GREWAL, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the order dated 24.10.2016 (Annexure P-1) passed by the Court of Judicial Magistrate 1st Class, Phillaur, whereby, the petitioner has been declared as proclaimed offender in a complaint case No.COMI/53/2017 (Instituted on 19.07.2012) titled as Pawan Kumar Vs. Surjit Singh and others, and all consequential proceedings arising therefrom.

2. Learned counsel for the petitioner contends that respondent no.1 Pawan Kumar has filed a criminal complaint on

19.07.2012 under Sections 326, 323, 382, 148 and 149 IPC against the present petitioner and four others. Vide order dated 16.05.2014 (Annexure P-2) the trial Court has summoned all the accused including the present petitioner to face the trial. Learned counsel for the petitioner further submits that the petitioner was never served in the present case. Under the impression that since the petitioner has not been served in the present case he went abroad in November, 2016 and came back to India in the year, 2018. After coming back to India the petitioner was shocked to find that he has been declared as proclaimed offender by the trial Court vide order dated 24.10.2016. Learned counsel further contends that since the petitioner was abroad, the summons/warrants were never served on him. Still, vide order dated 24.10.2016, the Court of Judicial Magistrate 1st Class, Phillaur, issued proclamation against the petitioner for 21.09.2016. In compliance of the order dated 24.10.2016 passed by the Judicial Magistrate 1st Class, Phillaur, the proclamation was published on 30.08.2016. However, on 21.09.2016, the statutory period of 30 days had not elapsed after the publication of the proclamation, the case was adjourned to 22.10.2016 to complete the period of 30 days. Ultimately, vide the impugned order dated 24.10.2016 (Annexure P-1), the Court had declared the petitioner as proclaimed person.

3. Learned counsel for the petitioner contends that even the trial Court had admitted that period of 30 days for appearance of the

accused had not completed and the case was adjourned for fulfilling the requirements of period of 30 days as provided under Section 82 Cr.P.C. However, such an adjournment by the trial Court would not fulfill the requirement of law and the impugned order is liable to be quashed by this Court.

4. On the other hand, learned State counsel vehemently opposes 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 is 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.

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

6. 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”.*

7. 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”.

8. In the present case also, it is apparent that the accused was directed to appear on 21.09.2016. However, on 21.09.2016, the statutory period of 30 days had not elapsed and the case was adjourned to 22.10.2016. Still further, vide impugned order dated 24.10.2016, the petitioner was declared as proclaimed person. From this, it is apparent that the trial Court had not granted the statutory notice of 30 days to the petitioner to appear before the trial Court and two repeated adjournments by the trial Court could never be termed 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 person.

9. As a consequence, the impugned dated 24.10.2016 (Annexure P-1) passed by the Court of Judicial Magistrate 1st Class, Phillaur, and all subsequent proceedings arising therefrom are ordered to be quashed qua the petitioner.

10. 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.

11. The petition is disposed off in above terms.

25.02.2025

(H. S. GREWAL)

M.Sikka

JUDGE

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