

Before Suvir Sehgal, J.

AMANDIP SINGH—*Petitioner*

versus

STATE OF PUNJAB—*Respondent*

CRM-M No.560 of 2021

January 08, 2021

The Code of Criminal Procedure, 1973—Ss. 82 and 482—Petition filed under Section 482 Cr.P.C. for quashing of F.I.R. and order declaring petitioner a proclaimed offender—F.I.R. registered against petitioner for theft of mobile—Notice issued to him received back with report that he is residing abroad—Vide order dated 29.10.2015 Court summoned petitioner through proclamation under Section 82 Cr.P.C.—Proclamation could not be published—On 24.11.2015 fresh proclamation was issued for 11.12.2015—Court recorded the statement of serving Constable—Court adjourned the proceedings to 04.01.2016 for appearance of the petitioner—On 04.01.2016 petitioner was declared proclaimed offender—Proclamation issued on 24.11.2015 for 11.12.2015 does not fulfill requirement of Section 82—Petition Partly Allowed—Order declaring Proclaimed Offender quashed.

Held that, from a perusal of the FIR, prima facie, it cannot be said that no cognizable offence is made out. Therefore, there is no ground for the quashing of the FIR and the prayer for quashing is declined.

(Para 8)

Further held that, from the above noticed zimni orders as well as the statement of the official, it is apparent that the proclamation, which was issued on 24.11.2015 for 11.12.2015, does not fulfill the requirement of Section 82, *ibid*, as the period is less than the prescribed period of 30 days. The bare fact that on 11.12.2015, the Court adjourned the trial so as to complete the requisite period of 30 days and declared the petitioner as proclaimed offender on 04.01.2016 also does not meet the mandate of the provision. Still further, it had come on the record before the trial Court that the petitioner was abroad. There is no material to show that any effort was made to serve the accused-petitioner through the Ministry of External Affairs. Consequently, this Court has no hesitation in coming to the conclusion that the impugned order dated 04.01.2016 (Annexure P-6) has been passed in violation of

the procedure and provisions of Section 82 of the Code and the same cannot be sustained.

(Para 11)

Gobind Singh Randhawa, Advocate
for the petitioner.

Saurav Khurana, DAG, Punjab.

SUVIR SEHGAL, J. oral

(1) The hearing of the case has been taken up through video conferencing on account of outbreak of COVID-19 Pandemic.

(2) Instant petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of FIR No.111 dated 18.04.2013, registered under Sections 454, 380 and 411 IPC at Police Station Phillaur, District Jalandhar, (Annexure P-1) along with all consequent proceedings arising therefrom including the impugned order dated 04.01.2016 (Annexure P-6) passed by the Sub Divisional Judicial Magistrate, Phillaur, whereby the petitioner has been declared as a proclaimed offender.

(3) Shorn of unnecessary details, the facts relevant for the disposal of this petition are that the impugned FIR was registered against the petitioner on the allegation that he had stolen a mobile phone from the house of the informant. The petitioner, defaulted in appearance before the trial Court on 20.10.2015, when notice was issued for his appearance. The notice was received back with the report that the petitioner is residing abroad. After recording its satisfaction, the trial Court issued summons for service of the petitioner through proclamation and vide impugned order dated 04.01.2016 (Annexure P-6), the petitioner was declared as a proclaimed offender.

(4) Counsel for the petitioner urges that the Court erred in invoking Section 82 of the Code of Criminal Procedure and issuing proclamation for his service even though there was a report that the petitioner is abroad. It has further been argued by the counsel that in any case the proclamation has not been published in the manner prescribed under the Code and the petitioner was never served before being declared as a proclaimed offender. Still further, he submits that the petitioner is prepared to surrender before the trial Court and join the proceedings. It has been submitted that the first petition (CRM-M-21704-2020) was withdrawn by the petitioner on 05.08.2020 with liberty to file a fresh one on the same cause.

(5) Notice of motion.

(6) On the asking of the Court, Mr. Saurav Khurana, DAG, Punjab accepts notice. State counsel opposes the petition and contends that the petitioner was aware of the criminal proceedings and has deliberately evaded the process of law. He submits that the proclamation was effected after following due process of law and the petitioner is not entitled to any relief from this Court.

(7) I have considered the submissions of the counsel and examined the paper book with the able assistance.

(8) Counsel for the petitioner has not addressed any argument on the issue of quashing of the impugned FIR (Annexure P-1). In any case, from a perusal of the FIR, prima facie, it cannot be said that no cognizable offence is made out. Therefore, there is no ground for the quashing of the FIR and the prayer for quashing is declined.

(9) A perusal of the zimni orders Annexures P-2 to P-6, passed by the trial Court, show that vide order dated 29.10.2015 (Annexure P-3), the Court summoned the petitioner through proclamation under Section 82 of the Code of Criminal Procedure. However, as the proclamation could not be published, vide order dated 24.11.2015 (Annexure P-4), fresh proclamation was issued for 11.12.2015, when the Court recorded the statement of the serving Constable, which deserves to be noticed and is reproduced hereunder:-

“Stated that I got received notice of aforesaid Amandip Singh for execution. A copy of notice is affixed on Notice Board of the Court and second copy was affixed on the door of the house of accused and third was affixed on public place of the village. On notice (Exhibit P-1), the report dated 30.11.2015 is my Exhibit P-2.”

(10) After recording the statement of the official, the trial Court adjourned the proceedings to 04.01.2016 for awaiting appearance of the accused-petitioner, on which date the impugned order dated 04.01.2016 (Annexure P-6) was passed, whereby the petitioner was declared as a proclaimed offender.

(11) From the above noticed zimni orders as well as the statement of the official, it is apparent that the proclamation, which was issued on 24.11.2015 for 11.12.2015, does not fulfill the requirement of Section 82, *ibid*, as the period is less than the prescribed period of 30 days. The bare fact that on 11.12.2015, the Court adjourned the trial

so as to complete the requisite period of 30 days and declared the petitioner as proclaimed offender on 04.01.2016 also does not meet the mandate of the provision. Still further, it had come on the record before the trial Court that the petitioner was abroad. There is no material to show that any effort was made to serve the accused-petitioner through the Ministry of External Affairs. Consequently, this Court has no hesitation in coming to the conclusion that the impugned order dated 04.01.2016 (Annexure P-6) has been passed in violation of the procedure and provisions of Section 82 of the Code and the same cannot be sustained.

(12) In view of the above discussion, the impugned order dated 04.01.2016 (Annexure P-6) is quashed. Considering the fact that the petitioner is willing to surrender and join the proceedings before the trial Court, it is ordered that in case, the petitioner surrenders before the trial Court within four weeks from today and files an application for grant of regular bail, the trial Court shall make an endeavor and decide the same within a period of one week of its filing.

(13) Petition is accordingly disposed of.

J.S. Mehndiratta