

Before Vinod S. Bhardwaj, J.

VISHWAJEET KULKARNI — *Petitioner*

versus

STATE OF HARYANA—*Respondent*

CRM-M No. 7288 of 2019

August 08, 2022

Code of Criminal Procedure, 1973 — S.82 — 30 days gap exist between date of publication of proclamation and actual proclamation — Presence of petitioner sought by proclamation on 25.07.2017 — Fresh proclamation issued on 08.09.2017 due to non receipt of report regarding earlier proclamation — earlier proclamation received back published on 18.09.2017 — petitioner declared proclaimed person on 16.09.2017 — revision preferred before Ld. Sessions Court dismissed — Challenged contending period of 30 days did not exist between date of proclamation and date fixed before Ld. Trial Court — held, mandatory to comply with time span of 30 days between date of proclamation and actual proclamation — Further Held, subsequent adjournment by court to make up for period of 30 days does not amount to statutory compliance — Revision petition allowed.

Held, that the position in law as regarding the mandate of Section 82 Cr.P.C. has been reiterated time and again to the effect that there must be a mandatory time span of 30 days, from the date of publication of proclamation and the actual proclamation and that any subsequent adjournment by the Court to make up for the period of 30 days does not amount to statutory compliance.

(Para 14)

Further held, that the object of proclamation is to ensure appearance of an accused so that the proceedings in a trial can be taken to a logical end. The counsel appearing on behalf of the petitioner undertakes to appear within a period of 04 weeks before the trial Court and to furnish bail bonds/surety bonds to the satisfaction of the trial Court and also to deposit a cost of Rs. 10,000/- with the District Legal Service Authority, Gurugram.

(Para 15)

Rohan Mittal, Advocate, *for the petitioner.*

Ramesh Kumar Ambavta, AAG, Haryana.

VINOD S. BHARDWAJ. J.

(1) The present petition has been preferred against the order dated 08.12.2018 passed by the Additional Sessions Judge, Gurugram in Revision Petition No. 76 of 2018 as well as against the order dated 16.10.2017 read with order dated 03.11.2017 passed by the Judicial Magistrate First Class, Gurugram whereby the petitioner was declared as proclaimed person in case bearing FIR No. 219 dated 13.09.2012 at Police Station Badsahpur, District Gurgaon for offence under Section 188 of the Indian Penal Code, 1860 (hereinafter referred to as “the IPC”) and Section 6, 7 (i), 8 and 10 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963.

(2) Learned counsel appearing on behalf of the petitioner contends that the petitioner was not named in the FIR and had no concern with the commission of the offence as he was merely an employee of the company i.e. M/s RDC Concrete Pvt. Ltd. and was handling the legal issues pertaining to the company at different locations. A charge was framed against the petitioner as he was appearing on behalf of the said company vide order dated 13.03.2015. The aforesaid order framing charge was challenged by the petitioner by means of filing a revision petition before the Court of Sessions at Gurugram. The said revision petition was dismissed by Additional Sessions Judge, Gurugram vide judgment dated 28.11.2017.

(3) Thereafter, the petitioner moved an application for appearance before the Judicial Magistrate First Class, Gurugram on 12.12.2017, but as the file had not been received from the Court of Additional Sessions Judge, Gurugram, the matter was adjourned to 03.01.2018. Even on the said date, the file had not been received. The petitioner and/or his counsel were not aware that the case has been sent to another Illaqa Magistrate and that the said Illaqa Magistrate had undertaken proclamation proceedings in the case on 16.10.2017 itself. The petitioner continued under the impression that the file had not been received from the Court of Additional Sessions Judge and was informed by his counsel that as and when the record has been received and the trial is to be proceeded further, he shall be informed. That it has also been revealed that non-bailable warrant was issued by the Judicial Magistrate First Class to ensure presence of the petitioner, however, even the same was received back unexecuted and the Judicial Magistrate directed the presence of the petitioner to be sought by proclamation on 25.07.2017 for 08.08.2017. On the said date, as the report had not been received, the proclamation was issued

afresh on 08.09.2017 for 18.09.2017. He contends that on 18.09.2019, the proclamation was received back published, however, as the mandatory period of 30 days had not expired, the case was adjourned to 16.10.2017 for awaiting presence of the petitioner. The order was finally passed on 16.10.2017 declaring the petitioner as a proclaimed person.

(4) The aforesaid order was challenged by the petitioner by means of filing a revision petition before the Sessions Court, however, the same was dismissed vide order dated 08.12.2018. The present petition has been filed raising a challenge to both the said orders.

(5) Learned counsel appearing on behalf of the petitioner contends that the trial court had issued a proclamation without complying with the mandatory provisions enshrined in Section 82 of the Code of Criminal Procedure (hereinafter referred to as “Cr.P.C.”) and as such the order declaring the petitioner as proclaimed person was wrong and liable to be set aside. He contends that the order for ensuring presence of the petitioner through proclamation was passed on 08.09.2017 for 18.09.2017 which was less than the mandatory period of 30 days prescribed in the statute. A further reference is made to various judgments to supplement the aforesaid contention.

(6) Learned counsel appearing on behalf of the respondent-State, however, defends the aforesaid order to contend that the proceedings were adjourned by the trial Court to comply with the mandate of 30 days to enable the petitioner-accused to put appearance. However, the same has not been done and as a result thereof, the proceedings before the trial Court have been unnecessarily delayed.

(7) I have heard learned counsel appearing on behalf of the parties and have gone through the record with their able assistance.

(8) Before proceedings further into the matter, it would be essential to extract the relevant statutory provisions enshrined in Section 82 of the Code of Criminal Procedure which is reproduced hereinbelow:-

Section 82 in The Code Of Criminal Procedure, 1973

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.

(9) A perusal of the aforementioned provision shows that a period of 30 days is to be granted to an accused to appear before the Court after the proclamation is done. It is uncontroverted that the aforesaid period of 30 days did not exist between the date of proclamation and the date fixed before the trial Court. The counsel representing the State however seeks to justify the issuance of the proclamation by averring that owing to the case being adjourned by the trial Court, the mandate of the period of 30 days to be afforded to an accused stands complied with. In this regard, it would be essential to make a reference to the judicial precedents on the said issue. This Court in the matter of *Ashok Kumar versus State of Haryana*¹ had held as under:

¹ 2013 (4) RCR (Cr.) 550

“3. As per order dated 4.1.2013 passed by the learned Additional Chief Judicial Magistrate, Panipat, the case has been adjourned for 6.3.2013 for issuing of proclamation under Sections 82 and 83 Cr.P.C. against petitioner Ashok Kumar. The order dated 6.3.2013 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.

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.

(10) In the matter of *Dilbagh Singh @ Sonu versus State of Punjab*², this Court held as follows:-

“8. In *Jagdev Khan v. Emperor, A.I.R. (35) 1948 Lahore*

² 2015 (8) RCR (Cr.) 166

151, the Hon'ble Lahore High Court dealt with the provisions relating to proclamation of person absconding, contained under Section 87 of the old Cr.P.C. which reads as under: -

“(1) If any Court has reason to believe.....that any person against whom a warrant has been issued by it has 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) (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; and

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;”

9. Provisions of Section 87 of the old Cr.P.C. are akin to Section 82 of Cr.P.C. in vogue.

10. Perusal of Section 82 Cr.P.C. and law laid down in Jagdev Khan's case (supra) makes it clear that in case a person is intentionally avoiding the warrants, Court is empowered to 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 and also the manner in which such proclamation shall be published. In order to ensure that an accused should have a fair opportunity to appear, 30 days clear notice is necessary and the proclamation should be published in the manner provided by law. In the instant case, proclamation of the petitioner was issued on 20.08.2014 for 23.08.2014 and vide impugned order dated 25.09.2014 petitioner was declared proclaimed offender. It is apparent on the face of record that clear notice of 30 days as mandated under Section 82 Cr.P.C. has not been given to the petitioner and the procedure for publication of proclamation has also not been followed. Besides that, there is nothing on record to show that provisions of Sub-Section

2(i) of Section 82 Cr.P.C. have been complied with. As per these provisions a notice of proclamation is required to be read publicly in some conspicuous place of the town or village in which such person ordinarily resides. It is also required to 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. A copy of the notice is also required to be affixed to some conspicuous part of the Court-house. Thus, petitioner has been wrongly declared proclaimed offender vide impugned order without following the procedure of law.”

(11) In the matter of ***Abhishek Sharma versus State of Punjab*** this Court vide order dated 01.05.2017 passed in CRM-M-5928 of 2017 (O &M), held as under:

Further, the order passed by the Court shows that proclamation was effected on 25.09.2016 and the next date was 17.10.2016. Therefore, mandatory period of 30 days has not been clearly given in the publication from the date of publication of the proclamation for appearance of the accused before the Court. The adjournment by the Court to complete 30 days' period is not as per law. How the accused would come to know that he is to appear on the next date before the Court.

(12) In the matter of ***Satinderpal Auja @ Satinder Singh versus State of Punjab and another*** this Court vide order dated 23.01.2017 passed in CRM-M-42740 of 2016, held as under:

The petitioner was declared a proclaimed offender vide order dated 08.02.2012 in respect of a proclamation which was done on 29.12.2011.

Learned counsel for the petitioner contends that in fact from 29.12.2011, 30 days clear notice was not given to the petitioner and the case was taken up on 02.01.2012 and, thereafter, it was further adjourned to 08.02.2012. In such eventuality, a fresh proclamation should have been issued in view of ratio laid down in **Ashok Kumar vs State of Haryana and another, 2013 (4) RCR (Criminal) 550**. Learned counsel further points out that the co-accused of the petitioner have since been acquitted by the High Court.

At this stage, without going into legality of the order dated 08.02.2012 passed by Judicial Magistrate Ist Class, Kapurthala, I am of the view that the petitioner can be directed to surrender before the trial Court. Petitioner is directed to appear before the trial Court on 02.02.2017. In the event of his doing so, he be released on bail subject to satisfaction of trial Court.

(13) Moreover, in the matter of *Avtar Singh versus State of Punjab and another*, this Court vide order dated 08.03.2017 passed in CRM-M-1866 of 2017, held 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 at 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.”

(14) In view of the aforesaid judgments, the position in law as regarding the mandate of Section 82 Cr.P.C. has been reiterated time and again to the effect that there must be a mandatory time span of 30 days, from the date of publication of proclamation and the actual proclamation and that any subsequent adjournment by the Court to make up for the period of 30 days does not amount to statutory compliance.

(15) Furthermore, the object of proclamation is to ensure appearance of an accused so that the proceedings in a trial can be taken to a logical end. The counsel appearing on behalf of the petitioner undertakes to appear within a period of 04 weeks before the trial Court and to furnish bail bonds/surety bonds to the satisfaction of the trial Court and also to deposit a cost of Rs. 10,000/- with the District Legal Service Authority, Gurugram.

(16) In view of the statutory provisions noticed above and taking into consideration the judicial precedents coupled with the undertaking

given by the petitioner to surrender before the trial Court within a period of 04 weeks and to deposit a cost of Rs. 10,000/- with the District Legal Service Authority, Gurugram, the present petition is allowed. The impugned order dated 08.12.2018 passed by the Additional Sessions Judge, Gurugram in Revision Petition No. 76 of 2018 as well as the order dated 16.10.2017 read with order dated 03.11.2017 passed by the Judicial Magistrate First Class, Gurugram are set aside. The petitioner shall surrender before the trial Court within a period of 04 weeks as undertaken above alongwith depositing the cost of **Rs. 10,000/-** with the **District Legal Service Authority, Gurugram** whereupon he shall be admitted to bail by the Illaqa Magistrate subject to his furnishing bail bonds/surety bonds to the satisfaction of the Court.

(17) The present petition is accordingly allowed.

Dr. Sumati Jund