

Gurinderjit Singh vs State Of Punjab on 29 January, 2025

Neutral Citation No:=2025:PHHC:014450

CRM M-10091 of 2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

297

CRM M-10091 of 2024

Date of Decision: 29.01.2025

Gurinderjit Singh

...Petitioner

Vs.

State of Punjab

...Respondent

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

Present : Mr. Suneet Pal Singh Aulakh, Advocate
for the petitioner.

Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 of Cr.P.C. with a prayer to quash the impugned order dated 14.09.2023 (Annexure P-1) passed by the Court of Sub-Divisional Judicial Magistrate, District Jalandhar, in case bearing FIR No. 82 dated 30.08.2019 registered under Sections 420, 465, 467, 468, 471 and 120-B of IPC registered at Police Station Nakodar, District Jalandhar Rural, Jalandhar.

2. Learned counsel for the petitioner contends that one FIR No. 82 dated 30.08.2019 registered under Sections 420, 465, 467, 468, 471 and 120-B of IPC Police Station Nakodar, District Jalandhar Rural, Jalandhar (Annexure P-2) was ordered to be registered against 1 of 8 Neutral Citation No:=2025:PHHC:014450 the present petitioner. In fact, the petitioner had no role in the entire occurrence and he himself was a victim. In reality, some other person had impersonated him in connivance with R.P. Jain, Bank Manager, however, the bank manager was not involved as an accused in the present case. The complaint was filed by the bank in the year 2015, whereas the FIR in the present case was registered on 30.08.2019. The petitioner had cooperated during inquiry and he was not aware of the registration of the FIR against him. After the registration of the case, the warrants were ordered to be issued against the petitioner, but the petitioner was never served by any official. Consequently, vide order dated 29.07.2023, the Court of SDJM, Nakodar observed that the

petitioner/accused was avoiding the process of the Court and he may be served through proclamation on or before 14.09.2023. However, the serving official was directed to execute the proclamation on or before 14.08.2023 and the case was posted for 14.08.2023 as well, for recording the statement of serving official. In fact, instead of 14.08.2023, the statement of SCT, Gurcharan Singh, 1548/JAL, the serving official is shown to have been recorded on 08.08.2023. He made the following statement before the Court of SDJM, Nakodar on 08.08.2023:-

"It is requested that one copy of the notice has been pasted upon the door of the house of the accused. Second Copy has been pasted as common place of the village. Proclamation has been get done, third copy has been pasted on the notice board of the Hon'ble Court and 2 of 8 Neutral Citation No:=2025:PHHC:014450 fourth copy after report is being submitted before this Hon'ble Court.

SCT/Gurcharan Singh 1548/JAL P.S. City NKD 08.08.2023."

3. Learned counsel for the petitioner contends that the provisions of Section 82 Cr.P.C., are mandatory in nature and the manner of publication of proclamation has been provided by the statute. It is mandatory to read the proclamation publicly in some conspicuous place of the town or village, in which, such accused ordinarily resides. Apart from that, a copy has to be affixed to some conspicuous part of the house of the accused, in which he ordinarily resides or some conspicuous place of such town or village and another copy has to be affixed to some conspicuous part of the Court. In addition, the Court may also, if it thinks it fit, direct a copy of the proclamation to be published in a daily newspaper circulating in place in which such person/accused ordinarily resides. In the instant case, it is apparent from the statement dated 08.08.2023 of Gurcharan Singh, serving official that he had not read the proclamation publicly in the village of the present petitioner. Still further, even the serving official had only signed a printed proforma and no statement, certifying the publication of the proclamation, was made by him.

4. A short reply by way of an affidavit of the Deputy Superintendent of Police, Sub Division Nakodar, District Jalandhar 3 of 8 Neutral Citation No:=2025:PHHC:014450 (Rural) has been filed on behalf of the respondent-State and the same is taken on record.

5. Learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner by alleging that in the present case, the prosecution had sufficiently complied with the mandatory provisions of Section 82 of the Cr.P.C, it was apparent that the proclamation was affixed at a conspicuous place as the house of the accused was found locked and there was sufficient publication of the proclamation and the provisions of Section 82 Cr.P.C were complied with. Apart from that, regular raids were conducted by the local police in order to apprehend the petitioner, but he was intentionally hiding himself and could not be arrested, despite, strenuous efforts made by the local police and finding no further alternative the Court was constrained to initiate the proceedings under Section 82 of the Cr. P.C. Learned counsel further vehemently argued that the petitioner was well aware of the PO proceedings and intentionally he evaded the process of law. Consequently, the petitioner is no entitled to any relief from this Court.

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

6. In the present case, the arguments raised by learned counsel for the parties are centered around the mandatory provisions of Section 82 of Cr.P.C, which is reproduced as follows:-

"82. Proclamation for person absconding. --

4 of 8 Neutral Citation No:=2025:PHHC:014450 (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 5 of 8 Neutral Citation No:=2025:PHHC:014450 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).]"

7. The only argument raised on behalf of learned counsel for the petitioner is that the proclamation has to be published in the manner laid down under Section 82 (2) Cr. P.C. The proclamation has to be read publicly first in some conspicuous place of the town or the village in which the accused ordinarily resides and then the same has to be affixed to some conspicuous part of the house, in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed on the notice board of the Court. The three sub-clauses (a)-(c) in Section 82 (2) (i) of Cr.PC are conjunctive and disjunctive, which means that there would be no valid publication of proclamation unless all the three modes of publication are proved. Where the Court so

6 of 8 Neutral Citation No:=2025:PHHC:014450 orders a copy of the proclamation has to be additionally published in a daily newspaper circulating in the place in which the accused ordinarily resides. Advisably, proclamation has to be issued with four copies so that one each of the three copies of the proclamation may be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides, to some conspicuous place of such town or village and to some conspicuous part of the courthouse and report regarding publication may be made on the fourth copy of the proclamation. Additional copy will be required where the proclamation is also required to be published in the newspaper. It has been held by this Court in CRM-M-25921-2020, titled as "Harinder Singh Vs. State of Haryana and Anr, decided on 22.09.2020.

8. In view of the above discussion, it is apparent that the trial Court had not complied with the mandatory provisions of Section 82(2) of Code of Criminal Procedure and the impugned order dated 14.09.2023 (Annexure P-1) is legally unsustainable and is ordered to be quashed qua the petitioner only.

9. In the present case, the trial arising out of FIR No.82 dated 30.08.2019 under Sections 420, 465, 467, 468, 471 and 120-B IPC registered at Police Station City Nakodar, Police District Jalandhar Rural, Jalandhar is stated to be pending before the trial Court. Consequently, the petitioner is directed to appear before the trial Court/Area Magistrate/Duty Magistrate within a period of 06 7 of 8 Neutral Citation No:=2025:PHHC:014450 weeks from today and on his appearance, 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 concerned Court may also be at liberty to impose such conditions as it may deem fit and appropriate in the facts and circumstances of the present case. In case, the petitioner does not surrender within a period of 06 weeks as mentioned above, his petition shall be deemed to be dismissed.

11. The petition is disposed off in above terms.

29.01.2025
amit rana

Whether reasoned/speaking
Whether reportable

(N.S.SHEKHAWAT)
JUDGE
: Yes/No
: Yes/No

