

Law Today Live Doc. Id. 15469

PUNJAB AND HARYANA HIGH COURT

Before: Harnaresh Singh Gill, J.

CRM-M-1056-2020

Decided on: 06.10.2020

Sachin Sharma

Petitioner

Versus

Suraj Mal

Respondent

Present:

Mr. Harinder Pal Singh Ishar, Advocate, for the petitioner.

None for the respondent.

Code of Criminal Procedure, 1973 (2 of 1974), Section 82 – Proclamation order – 30 day notice – Requirement of -- A clear period of 30 days was not afforded to the petitioner-accused so as to cause his appearance before the court -- Thereafter, the matter was adjourned but no fresh proclamation was ordered to be issued – Such adjournment beyond 30 days cannot be treated as compliance of the mandatory provisions of Section 82(1) Cr.P.C. -- Impugned order set aside – Direction given to surrender and also make the payment of Rs.10,000/- as costs to the complainant -- On his doing so, ordered to be released on bail.

(Para 7,8)

Cases referred:

1. Ashok Kumar Vs. State of Haryana and another 2013(4) R.C.R. (Criminal) 550.
2. Shokat Ali Vs. State of Haryana and another 2020(2) R.C.R. (Criminal) 339.

HARNARESH SINGH GILL, J. (ORAL) –

1. Case is taken up for hearing through video conferencing.

2. Through this petition, the petitioner seeks quashing of the order dated 29.09.2017 (Annexure P-3) passed by learned Judicial Magistrate, 1st Class, Kalka, in criminal complaint No.Comi./30/2016 dated 19.07.2016, titled as 'Suraj Mal Vs. Dev Raj and others', under Sections 420, 467, 468, 471 and 506 read with Section 120-B IPC, whereby the petitioner was declared a proclaimed person.

3. In pursuance of the notice of motion issued by this Court on 13.01.2020, none has appeared on behalf of the respondent despite service.

4. Learned counsel for the petitioner contends that the proclamation was never effected at the residence of the petitioner. He further contends that the trial Court has not followed the procedure laid down under Section 82 Cr.P.C., and the petitioner has not been afforded the requisite period of 30 days for causing his appearance, after publication of proclamation notice. In support of his contentions, the learned counsel relies upon **Ashok Kumar Vs. State of**

Haryana and another 2013(4) R.C.R. (Criminal) 550. He further contends that the petitioner has had no intention to abscond the trial and he is ready and willing to appear before the trial Court to face the trial.

5. I have heard the learned counsel for the petitioner and gone through the case file.

6. The issue raised in the present petition is purely legal as regards the mandatory compliance of the provisions of Section 82 Cr.P.C., therefore, the factual position need not be noticed.

7. While poring the documents available on record, it is axiomatic that the trial Court, while issuing proclamation notice on 10.08.2017, directed the petitioner to cause appearance on 01.09.2017. Thereafter, the matter was adjourned to 29.09.2017, but no fresh proclamation was ordered to be issued. In the present case, a clear period of 30 days was not afforded to the petitioner-accused so as to cause his appearance before the court. The trial Court, though, subsequently adjourned the matter, yet such adjournment beyond 30 days cannot be treated as compliance of the mandatory provisions of Section 82(1) Cr.P.C. Similar is the view taken in Ashok Kumar's case(supra) and **Shokat Ali Vs. State of Haryana and another 2020(2) R.C.R. (Criminal) 339.**

8. Resultantly, the present petition is allowed and the impugned order dated 29.09.2017 (Annexure P-3) is set aside. The petitioner is directed to surrender before the court concerned where the above-noted complaint is pending, within 15 days from today and also make the payment of Rs.10,000/- as costs to the complainant. On his doing so, he shall be released on bail by the concerned Court to its satisfaction. If he fails to comply with the aforesaid directions, then this petition shall be treated as dismissed.

Petition dismissed.
