

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

267 (2)

CRM-M-8601-2022
Date of decision: 06.07.2022

SADHU SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. S. S. Rangi, Advocate
for the petitioner.

Ms. Amarjit Kaur Khurana, DAG, Punjab.

Mr. Ramanpreet Singh, Advocate
for respondents No.2 and 3.

VINOD S. BHARDWAJ, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") seeking quashing of order dated 18.01.2019 (Annexure P-13) in FIR No. 71 dated 19.07.2013 under Section 307, 452, 323, 427, 506, 148 and 149 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC") registered at Police Station Raikot, District Ludhiana Rural (Annexure P-1) (offence under Section 325 was added and offence under Section 307 of the IPC was deleted on 27.07.2013 and thereafter vide Zimni dated 20.10.2013 offence under Sections 452, 427, 148 and 149 of the IPC were deleted and offence under Section 34 of the IPC was added) vide which the petitioner was declared as

proclaimed offender, as well as subsequent proceedings arising therefrom.

2. The facts of the instant case are that the FIR in question has been registered at the instance of one Sarabjit Singh son of Piara Singh dated 19.07.2013 wherein he had alleged that he was Polling Agent of one Chamkaur Singh Sarpanch at the time of Panchayat Elections where a fight had occurred with Gurmeet Singh son of Surjan Singh who had intimidated the complainant. On the date of incident, Jagtar Singh Panch who had been elected from Ward No. 5 was thanking the voters from Gurudwara Sahib which agitated Gurmeet Singh and others and they tried to pick a fight which was however settled by the respectable persons of both the sides and the parties were separated. At about 11:00 a.m., the complainant was present in his house, 20-25 persons came on various vehicles carrying weapons and caused injuries. The petitioner was allegedly armed with a kirpan and is alleged to have participated in the commission of offence along with other co-accused. No injury was however attributed to the petitioner.

3. It is submitted by the learned counsel appearing on behalf of the petitioner that the incident in question is stated to have taken place on 19.07.2013. The date of birth of the petitioner is 19.02.1998 and a passport in this regard was duly appended and as such he was less than 15 years of age as on the date of alleged incident and had been falsely implicated. Upon investigation into the matter, the petitioner was found innocent and was kept in column No.2 and not charge sheeted by the Investigating Agency. The statements of the prosecution witnesses i.e. complainant Sarabjit Singh and victim Piara Singh as well

as statement of eye-witness Inderjit Singh were recorded on 16.03.2019 as well as on 02.04.2019 wherein it is specifically stated that they had settled their dispute with the accused party and do not want to proceed further in the case and that permission be granted to them to compound the offence and that they have no objection if the accused persons are acquitted. The copies of the said statements of the complainant-victim as well as eye-witnesses had been appended along with petition as Annexure P-3 and P-4 respectively. He submits that a settlement has also been entered into between the petitioner and the complainant as well as the injured witnesses and the compromise deed in this regard has been filed along with the instant petition.

4. As per the paper book, non-bailable warrants against the petitioner were issued vide order dated 13.10.2018 that were received back on 25.10.2018 and a report was furnished that he was not found at the address, whereupon a proclamation was issued vide order dated 02.11.2018 or 21.12.2018. The said proclamation was issued on 13.12.2018 and effected on 15.12.2018. Copies of the non-bailable warrants reported as 2018 and the subsequent proclamation as well as the statement of ASI Laxman Singh were also appended along with the petition as Annexure P-6 to P-11 respectively. It is contended that the proclamation of the petitioner was affixed on 15.12.2018 and case was adjourned to 18.01.2019. The mandatory period of 30 days came to an end and thereafter the petitioner was declared as proclaimed offender vide order dated 18.01.2019 (Annexure P-13). It is submitted that the order of 'proclaimed offender' is not tenable inasmuch as there must be a period of 30 days as per Section 82 of the Cr.P.C. from the date of

publishing such proclamation and that any subsequent adjournment granted by the Court to complete the period of 30 days would not satisfy the requirement of Section 82 Cr.P.C.. Reliance in this regard was placed on the judgment of this Court in the matter of "**Ashok Kumar versus State of Haryana**" 2013 (4) RCR (Criminal) 550 to contend that the order dated 18.01.2019 is thus contrary to the statutory provision as well as the law so declared by this Court through various precedents judgments.

5. It is also worthwhile to submit that the parties had also filed a petition seeking quashing of the FIR and all consequent proceedings arising therefrom wherein the parties were directed to get their statements recorded before the Illaqa Magistrate with respect to the validity and genuineness of the compromise. A report dated 28.03.2022 has been received from Judicial Magistrate First Class, Jagraon in case bearing No. CRM-M-8581-2022 titled as "**Sadhu Singh versus State of Punjab**". The relevant extract of the same reads thus:

"..... In compliance of the same, separate joint statement of respondent/complainant Sarabjit Singh and Piara Singh was recorded. As per their joint statement, they have compromised the matter with petitioner/accused namely Sadhu Singh and the same is genuine, voluntary and without any coercion or undue influence and the same was signed by them and same is correct. The photocopy of compromise is Ex.CA. They further stated that they have no objection if FIR registered against the aforesaid petitioner/accused be quashed and they identified accused/ applicant Sadhu Singh whose statement was recorded uninterrupted through video conference (through whatsapp). They have placed on record self

attested photocopies of their Aadhar cards. Separate statement of petitioner/accused namely Sadhu Singh also recorded through whatsapp video conference, regarding compromise and he has also placed on record photocopy of his passport and driving licence. He will remain bound by the terms of compromise Ex.CA. He also identified complainant Sarabjit Singh and Piara Singh in the court today through video conferencing.”

6. Per contra, learned counsel appearing on behalf of the State of Punjab has not disputed the facts raised in the instant petition. A proposition of law sought to be relied upon by the petitioner is not countered by any judgment to the contrary.

7. I have considered the arguments advanced by the respective parties and have gone through the record in the present case.

8. Certain relevant statutory provisions which arise for the consideration of controversy involved in the present petition are extracted hereinafter below:-

“Section 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.

(4) Where a proclamation published under Sub-Section (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-Section (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).

9. A perusal of the aforesaid provision clearly shows that the statutory provisions prescribe a period of not less than 30 days from the date of publishing of such proclamation. The factual aspect is not in dispute that the publication of the proclamation was effected on

15.12.2018 and that mandatory period of 30 days had not elapsed on 21.12.2018 and the case was adjourned solely for the said reason to 18.01.2019 when the order in question was issued.

10. The aforesaid provisions has been interpreted by this Court in *Shaukat Ali versus State of Haryana 2020 (2) RCR (Criminal) 339* and *Ashok Kumar versus State of Haryana 2013 (4) RCR (Criminal) 550*. The relevant extract thereof is reproduced hereinafter below:-

"6. In the present case while publication was effected on 31.5.2018, the accused was required to appear on 1.6.2018. This Court in Ashok Kumar v. State of Haryana 2013(4) RCR (Criminal) 550 while interpreting the provisions of Section 82(1) has held that a clear period of 30 days is required to be furnished to the accused and that even in case the Court subsequently adjourned the matter, such adjournment beyond 30 days cannot be treated as compliance of provisions of Section 82(1) Cr.P.C. The relevant extract from the cited judgment reads as follows:-

"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."

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.

11. Even otherwise, the matter needs to be considered from a

different perspective as well. The date of birth of the petitioner being 19.02.1998 is not a subject matter of dispute and as such, the petitioner was less than 15 years of age as on the date of commission of offence.

12. As the offence in question was allegedly committed in the year 2013, the provisions of the Juvenile Justice (Care and Protection) Act, 2000 as amended were applicable and the petitioner would fall under the definition of 'Juvenile in conflict with law'.

13. The relevant statutory provisions of the Act of 2000 are extracted herein after below:-

Juvenile Justice (Care And Protection Of Children)
Act, 2000

2 . Definitions.- In this Act, unless the context otherwise requires,-

- (k) "juvenile" or "child" means a person who has not completed eighteenth year of age;*
- (l) "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence;*
- (p) "offence" means an offence punishable under any law for the time being in force;*

10 . Apprehension of juvenile in conflict with law.- (1) As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer who shall immediately report the matter to a member of the Board. (2) The State Government may make rules consistent with this Act,- (i) to provide for persons through whom (including registered voluntary organizations) any juvenile in conflict with law may be produced before the Board; (ii) to provide the manner in which such juvenile may be sent to an observation home.

15 . Order that may be passed regarding juvenile.- (1)

Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit,- (a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile; (b) direct the juvenile to participate in group counselling and similar activities; (c) order the juvenile to perform community service; (d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money; (e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years; (f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years; (g) make an order directing the juvenile to be sent to a special home,- (i) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years; (ii) in case of any other juvenile for the period until he ceases to be a juvenile: Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit. (2) The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organization or otherwise, and shall take into consideration the findings of such report before passing an order. (3) Where an order under clause (d), clause (e)

or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law: Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institute on under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home. (4) The Board shall while making a supervision order under sub-section(3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

18 . No joint proceeding of juvenile and person not a juvenile.- (1)Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time offence together with a person who is not a juvenile. being in force, no juvenile shall be charged with or tried for any (2) If a juvenile is accused of an offence for which under section 223of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, such juvenile

and any person who is not a juvenile would, but for the prohibition contained in sub-section (1), have been charged and tried together, the Board taking cognizance of that offence shall direct separate trials of the juvenile and the other person.

14. A conjoint reading of the aforesaid provisions clearly shows that there can be no joint proceedings of a 'juvenile in conflict with law' along with a person not a juvenile. An order could only have been passed by the Juvenile Justice Board so constituted in terms of Chapter II of Juvenile Justice (Care and Protection) Act, 2000 and the procedure as contemplated therein is required to be followed. Apparently, the said procedure has not been adopted while passing the order declaring the petitioner as 'proclaimed person'. Hence, the said order even otherwise becomes without jurisdiction.

15. Hence, considering it from either of the perspective, the order passed under Section 82 (1) Cr.P.C was not only in violation of the statutory procedure prescribed under the Code of Criminal Procedure, 1973 but also without authority inasmuch as the juvenility of the petitioner is not a subject matter of dispute.

16. The impugned order thus does not sustain when examined under any of the aforesaid circumstances. Even otherwise, the main dispute has already been resolved amongst the parties and the FIR as well as other consequential proceedings already stands quashed vide judgment of even date passed in CRM-M-8581-2022. The continuance of the effect of the order passed under Section 82(1) Cr.P.C. so as to cast a stigma against the petitioner is not likely to advance any interest of justice and only be a source of harassment for the petitioner.

17. In view of the above, the present petition is allowed and

order dated 18.01.2019 (Annexure P-13) passed in case tilted as “*State versus Pawandeep Singh etc.*” arising out of FIR No. 71 dated 19.07.2013 under Section 307, 452, 323, 427, 506, 148 and 149 of the Indian Penal Code, 1860 registered at Police Station Raikot, District Ludhiana Rural (Annexure P-1) (offence under Section 325 was added and offence under Section 307 of the IPC was deleted on 27.07.2013 and thereafter vide Zimni dated 20.10.2013 offence under Sections 452, 427, 148 and 149 of the IPC were deleted and offence under Section 34 of the IPC was added) vide which the petitioner was declared as proclaimed offender, **is set aside** qua the petitioner. However, the same would be subject to payment of costs of **Rs. 10,000/-** to be deposited by the petitioner in the “**Punjab State Legal Service Authority, Mohali**” within a period of one month from the receipt of certified copy of this order.

Petition is allowed accordingly.

सत्यमेव जयते

(VINOD S. BHARDWAJ)
JUDGE

JULY 06, 2022

Vishal sharma

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