

(2018) 09 RAJ CK 0091

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 2280 of 2018

Anil Singh, Chairman AIT @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 07-09-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 82, 482

Citation : (2018) 09 RAJ CK 0091

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Advocate : Yashwardhan Nandwana, Rajesh Goswami, Prakash Thakuriya

Judgement

1. The present petition has been filed under Section 482 Cr.P.C. praying that the order dated 14.3.2018 passed by Judicial Magistrate, First Class,

No.4, Ajmer in Criminal Case No. 43/2016 whereby the petitioner was declared proclaimed offender be set aside.

2. Learned counsel for the petitioner has submitted that no procedure prescribed under Section 82 Cr.P.C. was followed. 3. Section 82 of Code of

Criminal Procedure reads as under:-

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 subsection (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.â??

4. This Court on 6.8.2018 had requisitioned the record from the trial court through special messenger.

5. A perusal of the record reveals that no proclamation within the ambit of Section 82 Cr.P.C. was issued and what to say of publication of the proclamation at a conspicuous place. Even the statement of the constable recorded is not to the effect that he published the proclamation.

6. Perusal of the record reveals that the statement of the Constable Sheonarayan was recorded on 14.3.2018. The statement of Constable

Sheonarayan recorded on 14.3.2018 reads as under:-

â??'kiFk fnykbZ xbZ%& fnukad 26-2-18 dks eSa Fkkuk fÃ?â?p;uxat ij dkfu ds in ij rSukrÂ Fkka ml fnu eq>s eqfYte vfuy flag ps;jeSu ,vkbZVh

iq""dj ckbZikl tukuk vLirky ds vkxs dk fxjÂ¶rkjh okj.V iznâ??kZ lh 1 izkIr gqvK o iznâ??kZ lh 2 eqfYte estj HkLrhjke fuoklh &,vkbZVh iq""dj ckbZikl

tukuk vLirky ds vkxs dk fxjÂ¶rkjh okj.V izkIr gqvKa okj.V dh rkehy gsrq fn, x;s irs ij iggapk rks irk yxk fd eqfYte fn, irsa ij ugha feyk ogk mifLFkr

vkj,l mnkor o euh""k ls iwNk rks mUgksaus vfuy flag dk dksbZ LFkk;h irk ;k eksckbZy uacj ugh crk;kA okj.Vh estj HkLrhjke dk Hkh orZeku irk

nksuksa us ugha crk;k vkSj crk;k fd 5&6 o""kZ iwoZ ukSdjH djrk Fkk NksM dj pyk x;k] orZeku esa dgk jgrk gS irk ughaA iznâ??kZ lh 1 o lh 2 ij , ls

ch nks txg esjs gLrk{kj gS lh ls Mh nks txg esjh fjiksVZ gSA iznâ??kZ lh 3 ,vkbZVh dh fjiksVZ gS ftl ij , ls ch vkj,l mnkor ds gLrk{kj gSA iznâ??kZ

lh 4 ,vkbZVh dk fjiksVZ gS ftl ij , ls ch vkj,l mnkor ds gLrk{kj gSaA nksuksa eqfYte viuh ldwur ls :giksâ??k gksdj fxjÂ¶rkjh ls cp jgs gS ftuds fudV

Hkfo""; esa feyus dh laHkkouk ux.; gSA eqfYteku dh py vpy laifÃ?k dh lwph ckn
esa isâ??k dj nawxk iqu% ijh{k.k%& 'kwU;

uksV& xokg ds c;ku esjs funsZâ??ku esa Vafdr fd;s x;sA

vkj-vks- ,.M ,-lh-â??

7. Constable Sheonarayan nowhere has stated that any proclamation within the ambit of Section 82 Cr.P.C. was handed over to him or he has

published the same calling upon the accused to appear before the court within thirty days time prescribed under Section 82 Cr.P.C.

8. In the present case, Constable had taken the arrest warrant issued which he could not serve upon the accused and on 14.3.2018 his statement to

this effect was recorded and at once, the accused was declared as proclaimed offender.

9. Consequently, since the order declaring the petitioner as proclaimed offender is not in consonance with the procedure laid under Section 82

CR.P.C., the same is set aside.

10. The petitioner is directed to appear before the court below within two weeks from today. Upon appearance of the petitioner, regular bail

application to be filed by the petitioner shall be decided by the court below strictly in accordance of the provisions of law after considering merits of

the case.

11. Dy. Registrar (Judicial) is directed to return the record to the trial court forthwith through Special Messenger.