
(2019) 07 P&H CK 0151

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 8609 Of 2017 (O&M)

Shobhanand Jha @ Ravishankar Prabhakar

APPELLANT

Vs

State Of Haryana

RESPONDENT

Date of Decision : 26-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 406, 420
Code Of Criminal Procedure, 1973 — Section 82, 82(1)

Citation : (2019) 07 P&H CK 0151

Hon'ble Judges : Gurvinder Singh Gill, J

Bench : Single Bench

Advocate : R.S. Rai, Anurag Arora, Rahul Sharma, Deepak Sabharwal, Ankit Kohli, Karambir Singh Nalwa, Deepak Balyan

Final Decision : Allowed

Judgement

Gurvinder Singh Gill, J

1. The petitioner has approached this Court seeking setting aside of order dated 25.10.2016 passed by learned Chief Judicial Magistrate, Ambala

(Annexure P-4) in FIR No.115 dated 21.3.2014 at Police Station Ambala City, District Ambala, Haryana under Sections 406 and 420 of Indian Penal

Code, 1860, whereby the petitioner has been declared a proclaimed offender.

2. Shorn of unnecessarily details, the facts, in brief, are that petitioner is involved in case FIR No.115 dated 21.3.2014, wherein the allegations are that

â??M/s J.K. Jute Millsâ?? had supplied 1300 gunny bales (each bale containing 500 bags), which did not even bear the marking of brand â??J.K. Jute

Millsâ?? and were either bearing marking of some other brand or were not bearing any marking at all. HAFED informed about the matter to

Director General, Food and Supplies, Haryana (DGFS), who constituted a

committee. The said committee visited Rail Head, Ambala and inspected the condition of bales and it was found that the bales do not contain markings of the agency. It is alleged that the mill had cheated HAFED and caused wrongful loss to HAFED while causing wrongful gain to itself by supplying old, mutilated, torn and unbranded gunny bales.

3. Since, the petitioner could not be arrested by the police despite efforts made by the police, proclamation under Section 82 Cr.P.C. was issued vide

proclamation notice dated 1.9.2016 (Annexure P-5). The said notice reads as follows:-

â?? To

The SHO,

PS Ambala City.

Whereas, complaint has been made before me that Shobhanand Jha S/o Nitya Nand Jha R/o Bhara Nagar Joot Factory 284, Mahananda Road Alam

Bazar 24 PGS Pargana, 35 Kolkota has committed the offence punishable U/s 406, 420, 120-B IPC. Whereas it has been shown to my satisfaction

that the said accused has absconding or concealing himself to avoid of service of the warrant.

Proclamation is hereby made that the said accused Shobhanand Jha is required to appear at Ambala before this court before me to answer the said

complaint on 26.09.2016 at 09:30 am.

Given under my hand and the seal of this Court this 1st Day of September, 2016.

Sd/-

(Swati Sehgal)

Chief Judicial Magistrate

Ambalaâ??

4. Proclamation was effected on 23.9.2016 i.e. three days before the date nominated for appearance of the petitioner, as would be evident from the

statement of serving official ESAI, Karnail Singh (Annexure P-6). The said statement recorded by the learned Chief Judicial Magistrate, Ambala on

26.9.2016 reads as follows:-

â??Stated that on 23.09.2016 I went to the given address of the accused Shobhanand Jha S/o Nitya Nand Jha R/o Bhara Nagar Joot Factory 284

Mahananda Road Alam Bazar 24 PGS Pargana, 35 Kolkata and one copy of the proclamation issued by the Honourable Court was pasted and read to

the people standing nearby; one copy of the proclamation was pasted on the notice board of the Honourable Court and the third copy of the

proclamation has been submitted to the court today alongwith my report.

Report submitted.

RO&AC

Sd/-

(Swati Sehgal)

Chief Judicial Magistrate

Ambala

26.09.2016

5. Thereafter, it was vide impugned order dated 25.10.2016 (Annexure P-4) that the petitioner was declared a proclaimed offender. The relevant

extract from the impugned order dated 25.10.2016 reads as follows:-

“..

5. Perusal of the case file reveals that proclamation against the accused Shobha Nand Jha, Rakesh Kumar, Laxmi Narain and Sudhir Kumar was

effected on 21.9.2016 and separate statement of the Executing Officer to that effect was recorded on 26.9.2016. Till 30 days time period fixed for

appearance of the accused after publication of the proclamation has already expired. Today also, the accused have not appeared before the court

despite repeated calls. Therefore, the application in hand moved on behalf of accused Shobha Nand Jha, Rakesh Kumar, Laxmi Narain and Sudhir

Kumar stands dismissed.

Sd/-

(Swati Sehgal)

CJM, Ambala.

25.10.2016

6. A perusal of the proclamation notice shows that the accused was required to appear on 26.9.2016. However, it was on 23.9.2016 that the

proclamation was actually effected as is evident from the statement of serving official (Annexure P-6). In other words, as on the date when the

proclamation was effected i.e. on 23.9.2016, the accused was afforded only three days to cause his appearance.

7. Section 82(1) Cr.P.C. mandates that a period of not less than 30 days has to be provided for causing appearance from the date of publication of

such proclamation. Although it was not on 26.9.2016 that the accused was declared proclaimed offender and the matter was adjourned and it was

later that the order declaring him a proclaimed offender was passed, but such like adjournment so as to defer passing of the order of proclamation

would not cure the defect of not having provided clear 30 days from the date of effective proclamation till the date nominated for causing his

appearance. This Court in Ashok Kumar Vs. State of Haryana 2013(4) R.C.R. (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.”

8. In view of the aforestated factual position, wherein a period of only 3 days was afforded for causing appearance after the proclamation was

effected and in light of ratio of Ashok Kumar’s case (supra), the petition is accepted and the impugned order dated 25.10.2016 passed by learned

Chief Judicial Magistrate, Ambala (Annexure P-4) is hereby set aside.

9. The petition stands accepted accordingly.