

- Section 82(1) of the Criminal Procedure Code (CrPC) provides the procedure for the appearance of an individual before the court in criminal proceedings and regulates the liberty of an individual, stemming from Article 21 of the Constitution of India.
- A clear period of 30 days starting from the date when a proclamation under Section 82 of the CrPC is mandatory for the appearance of an individual before the court.
- If no clear 30-day period is prescribed for the purpose of putting in appearance before the trial court, in pursuance to the proclamation effected under Section 82 of the CrPC, the order is liable to be set aside.
- The court has to wait until the expiry of 30 days to enable the accused to appear in terms of the proclamation under Section 82 of the CrPC.
- If a person is declared a proclaimed offender on account of their non-appearance before the court on a subsequent date, whereas for the said subsequent date, there was no proclamation under Section 82(1) of the CrPC ordered or effected, it is liable to be set aside.
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(2023-2)210 PLR 631

PUNJAB AND HARYANA HIGH COURT

Before: Justice Harkesh Manuja.

BALWINDER SINGH SIDHU – Petitioner

Versus

STATE OF PUNJAB – Respondent.

CRM-M-27568 of 2021

(i) Criminal Procedure Code, 1973 (2 of 1974), S. 82(1) - Constitution of India, Article 21 - Proclamation - Procedure - Mandatory and inviolable - The provisions of Section 82 (1) Cr.P.C. provides procedure for appearance of an individual before the Court in the criminal proceedings and thus, regulates the liberty of an individual as such it stems from Article 21 of the Constitution of India and accordingly becomes mandatory and inviolable.

(ii) Criminal Procedure Code, 1973 (2 of 1974), S. 82(1), 482 - Proclamation - 30 days' time for appearance - Once no clear 30 days period was prescribed to the petitioner for the purpose of putting in appearance before the trial Court, in pursuance to the proclamation effected under Section 82 Cr.P.C., the order dated 12.03.2020 being violative of Section 82 Cr.P.C. is thus, liable to be set aside.

(iii) Criminal Procedure Code, 1973 (2 of 1974), S. 82(1), 482 - Proclamation - On the date for which the proclamation was issued matter adjourned simply for another subsequent date - Was declared as proclaimed offender on account of his non-appearance before the Court on the subsequent date - Whereas for the said subsequent date, there was no proclamation under Section 82 (1) Cr.P.C. was either ordered or effected - Set aside.

Facts : Once the proclamation was ordered by the Court below for putting in appearance on 14.01.2020, the same was required to be for a clear period of 30 days as prescribed under Section 82 (1) Cr.P.C. - Proclamation was effected on 10.01.2020 for 14.01.2020 being the date of appearance i.e. giving only 04 days' time - Clearly falls short of the statutory period of 30 days prescribed was in violation of Section 82 (1) Cr.P.C. - Trial Court did not pass any order declaring the petitioner as proclaimed offender on 14.01.2020 except adjourning the matter for 12.03.2020 - Was declared as proclaimed offender on account of his non-appearance before the Court on 12.03.2020 - Whereas for the said date, there was no proclamation under Section 82 (1) Cr.P.C. was either ordered or effected.

Cases referred:

1. 2013 (4) RCR (Criminal) 550, *Ashok Kumar v. State of Haryana*

Mr. Akshay Jain, for the petitioner. *Mr. V.K. Gupta*, AAG, Punjab.

HARKESH MANUJA, J. (ORAL) - (12.04.2023) - By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of order dated 12.03.2020 (P-3) passed by the Court of learned JMJC, Jagraon, District Ludhiana, whereby the petitioner was declared as proclaimed offender.

2. Having been arrayed as an accused in FIR No. 46 dated 03.08.2013, under Sections 406/420 IPC, registered at Police Station, Raikot, District Ludhiana, besides his brother, the petitioner was declared as proclaimed offender vide order dated 12.03.2020, which has been assailed by way of present petition.

3. Referring to the orders Annexures P-3, P-6 &P-7, learned counsel for the petitioner submits that the proclamation under Section 82 Cr.P.C. was made on 10.01.2020 for 14.01.2020 being the date for appearance and thus, the same being short of statutory period of 30 days was in violation of Section 82 (1) Cr.P.C. For the said purpose, Mr. Akshay Jain, relies upon the judgment of this Court in *Ashok Kumar Vs. State of Haryana and another*, 2013 (4) RCR (Criminal) 550. In addition, he also submits that the trial Court did not even pass any order declaring the petitioner as proclaimed offender on 14.01.2020 except adjourning the matter for 12.03.2020; whereas the petitioner was declared as proclaimed offender on 12.03.2020 though there being no proclamation having been effected for his appearance on the said date i.e. 12.03.2020. For reference, para 4 of *Ashok Kumar's case* (supra) being relevant is reproduced hereunder:-

"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."

4. On the other hand, learned State counsel submits that the brother of the petitioner was continuously appearing before the Court below and thus, the petitioner was having complete knowledge about the pendency of the present proceedings. He further submits that the petitioner relies upon the procedural infirmities for the purpose of impugning the order dated 12.03.2020 which was wholly uncalled for.

5. I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made on behalf of the petitioner.

6. Once the proclamation was ordered by the Courts below for putting in appearance on 14.01.2020, the same was required to be for a clear period of 30 days as prescribed under Section 82 (1) Cr.P.C.

7. In the present case, the proclamation was effected on 10.01.2020 for 14.01.2020 being the date of appearance i.e. giving only 04 days' time for the purpose of appearance to the petitioner, which clearly falls short of the statutory period of 30 days prescribed under Section 82 (1) Cr.P.C.

8. More than that, the petitioner was declared as proclaimed offender on account of his non-appearance before the Court concerned on 12.03.2020; whereas for the said date, there was no proclamation under Section 82 (1) Cr.P.C. was either ordered or effected. The provisions of Section 82 (1) Cr.P.C. provides procedure for appearance of an individual before the Court in the criminal proceedings and thus, regulates the liberty of an individual as such it stems from Article 21 of the Constitution of India and accordingly becomes mandatory and inviolable.

9. In view of the discussion made hereinabove, once no clear 30 days period was prescribed to the petitioner for the purpose of putting in appearance before the trial Court, in pursuance to the proclamation effected under Section 82 Cr.P.C., the order dated 12.03.2020 being violative of Section 82 Cr.P.C. is thus, liable to be set aside and the same is accordingly so ordered.

10. Ordered accordingly.

11. Petition is thus allowed in the aforesaid terms.

12. Pending application(s), if any, shall also stand disposed of.