

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.	CRM-M No.12547 of 2016	
Avtar Singh		... Petitioner
	Versus	
Harinder Singh Kang		... Respondent
2.	CRM-M No.21891 of 2014	
Joginder Singh and others		... Petitioners
	Versus	
State of Punjab		... Respondent
3.	CRM-M No.15394 of 2016	
Rajeev Bansal		... Petitioner
	Versus	
State of Haryana		... Respondent
4.	CRM-M No.8701 of 2016	
Gursharan Singh		... Petitioner
	Versus	
State of Punjab and others		... Respondents
5.	CRM-M No.3451 of 2016	
Gursandeep Singh and others		... Petitioners
	Versus	
State of Punjab and others		... Respondents
6.	CRM-M No.21686 of 2016	
Nishan Singh		... Petitioner
	Versus	
State of Punjab		... Respondent

- 7. CRM-M No.19357 of 2016**
Kamlesh Aggarwal ... Petitioner
Versus
State of UT Chandigarh and others ... Respondents
- 8. CRM-M No.3824 of 2016**
Sunil Kumar Aryan ... Petitioner
Versus
State of Haryana and another ... Respondents
- 9. CRM-M No.19308 of 2014 (O&M)**
Kuldeep Singh @ Deepa ... Petitioner
Versus
State of Punjab and another ... Respondents
- 10. CRM-M No.43371 of 2015**
Munish Kumar ... Petitioner
Versus
State of Punjab and another ... Respondents
- 11. CRM-M No.16762 of 2016**
Ranjit Singh @ Ranjeet Singh ... Petitioner
Versus
State of Punjab and another ... Respondents
- 12. CRM-M No.44285 of 2015**
Samsu and others ... Petitioners
Versus
State of Haryana and another ... Respondents

13. CRM-M No.26370 of 2015
Gurcharan Singh ... Petitioner
Versus
State of Punjab ... Respondent

14. CRM-M No.26746 of 2015
Gurcharan Singh ... Petitioner
Versus
State of Punjab ... Respondent

(hereinafter referred to as, 'first lot')

15. CRM-M No.5341 of 2016
Randeep Singh @ Amandeep Singh ... Petitioner
Versus
State of Punjab ... Respondent

16. CRM-M No.2508 of 2016
Sohan Singh ... Petitioner
Versus
State of Punjab ... Respondent

17. CRM-M No.14238 of 2016
Jasvir Singh @ Jasvir Singh Toor ... Petitioner
Versus
State of Punjab ... Respondent

18. CRM-M No.5470 of 2016
Harjit Singh @ Harjit Kamboj ... Petitioner
Versus
State of Punjab ... Respondent

- 19. CRM-M No.7098 of 2016**
- Harjit Singh @ Harjit Kamboj ... Petitioner
- Versus
- State of Punjab ... Respondent
- 20. CRM-M No.5793 of 2016**
- Gurinder Singh ... Petitioner
- Versus
- State of Punjab ... Respondent
- 21. CRM-M No.40522 of 2015**
- Baltej Singh ... Petitioner
- Versus
- State of Punjab and another ... Respondents
- 22. CRM-M No.2317 of 2016**
- Sohan Singh ... Petitioner
- Versus
- State of Punjab ... Respondent
- (hereinafter referred to as, 'second lot')**
- 23. CRM-M No.4776 of 2016**
- Sukhjot Kaur ... Petitioner
- Versus
- State of Punjab ... Respondent
- 24. CRM-M No.7272 of 2015**
- Parteek Sood @ Rahul ... Petitioner
- Versus
- State of Punjab ... Respondent

25. CRM-M No.13004 of 2016 (O&M)

Nishan Singh
... Petitioner

Versus

State of Punjab
... Respondent

(hereinafter referred to as, 'third lot')

26. CRM-M No.14245 of 2016

Sukhwinder Singh @ Sukhi
... Petitioner

Versus

State of Punjab
... Respondent

27. CRM-M No.8071 of 2016

Gurminder Bir Singh @ Gurwinder Bir @ Babu
... Petitioner

Versus

State of Punjab
... Respondent

28. CRM-M No.25835 of 2015

Chet Nayyer @ Chetan Nayyar
... Petitioner

Versus

State of Punjab
... Respondent

29. CRM-M No.17061 of 2016

Jagjit Singh
... Petitioner

Versus

State of Punjab
... Respondent

30. CRM-M No.12525 of 2015

Sukhjinder Singh
... Petitioner

Versus

State of Punjab and another
... Respondents

31. CRM-M No.17878 of 2016

Ashok Kumar

... Petitioner

Versus

State of Punjab

... Respondent

32. CRM-M No.16847 of 2016

Manjit Kumar @ Manjit Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

33. CRM-M No.12394 of 2016

Kashmir Singh

... Petitioner

Versus

State of Punjab

... Respondent

34. CRM-M No.5311 of 2016

Ninder Singh

... Petitioner

Versus

State of Punjab

... Respondent

(hereinafter referred to as, 'fourth lot')

Date of decision: 23rd November, 2016

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Pankaj Bali, Mr. Navkiran Singh, Mr. Sumit Jain,
Mr. Vaibhav Narang, Mr. Sandeep S. Majithia,
Ms. Satinder Kaur, Mr. Arvind Kashyap, Mr. Wazir Singh,
Mr. Parminder Singh, Mr. Dinesh Trehan, Ms. G.K. Mann,
Mr. Mohd. Arshad, Mr. Gurmeet Singh, Mr. R.S. Ghuman,
Mr. Vivek Goel, Mr. C.M. Munjal, Mr. Aman Pal,
Mr. J.S. Jaidka, Mr. Mansur Ali, Mr. M.K. Sood,
Mr. Roopak Bansal, Mr. Vijay Lath, Mr. R.K. Bajaj,
Mr. Veneet Sharma, Mr. Sandeep Jain, Mr. Kartik Gupta,
Mr. Ramesh Sharma, Mr. P.S. Sullar, Mr. M.S. Viridi
Advocates for the petitioners.

Mr. Gaurav Tyagi, Mr.GBS Dhillon, Advocates
for the private respondents.

Mr. Gurveer Sidhu, Asstt. Advocate General, Punjab
for State of Punjab.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for State of Haryana.

FATEH DEEP SINGH, J.

The above detailed bunches of four lots of factually varying petitions, all preferred under Section 482 of the Code of Criminal Procedure (hereinafter referred to as, 'Cr.P.C.') praying for the exercise of inherent powers seeking quashment of the respective orders declaring the petitioners therein in each of these petitions as **“proclaimed offenders”** have come about to be consolidated and disposed off together and on account of different views diametrically opposed to each other having been canvassed before this Court by the respective counsel have necessitated this Court to take up all these matters conjointly with an effort to bring about uniformity in the disposal of such matters, as over a period of time and by such divergent expression of opinions on the point of law is making the things all the more unclear rather than bringing about clarity on law to enable the Courts to comprehensively address the relative grievances of each of such placed persons and thus, facilitate dispensation of justice in the right earnest thereby clearing the cobwebs that have come about over these decisions.

In the first lot, the petitioners though while residing within the respective territorial jurisdiction of the concerned Courts in the country well detailed in their particulars, have been declared as proclaimed offenders; whereas in the second lot the primary grievance is that the petitioners even prior to the occurrence and registration of the FIR in terms of Section 154 Cr.P.C. were putting up out of the country, miles and miles away from concerned Courts and the places of occurrence; and the third lot arose from where there have been legal infirmities in the orders declaring these petitioners as proclaimed offenders and the fourth lot of petitions are aligned to the persons who being fully aware and having participated in the process of investigations/trial have intentionally subsequently remained away from arms of the law and were termed to be so.

Before venturing into the relative merits of the case of different sets of petitioners, it would be in the fairness of things if relevant provisions of law, statutory as well as case law, are taken note of as it will facilitate better understanding and solving this legal maze and getting out of this imbroglio.

With the advent of Code of Criminal Procedure, 1973, the primary object of the framers was to bring about uniformity in criminal procedure as earlier there was no uniform law of criminal

procedure for whole of the country. Thus, with that end in view there have been innumerable amendments not only primarily to solve this ever-growing problem but also with an intent to simplify the procedure and also to expedite the trials before the criminal Courts. Though with all sincerity and best of the efforts, draft of the Cr.P.C. has been tried to be made easier, simpler and more systematic but still certain “grey areas” remain to be addressed and for which over a period of time, the Law Commission has been making repeated recommendations, thus an effort to make the procedure of criminal Courts as well as criminal delivery system more efficacious and effective.

Chapter V of Cr.P.C. deals with arrest of persons and Section 41 of it lays down the procedure when the police may arrest a person without warrants. Under these provisions, a police officer has been given wide powers to arrest any person without warrant or without an order from a Magistrate when that person commits a cognizable offence or against whom there is a reasonable complaint based on credible information raising reasonable suspicion of having committed a cognizable offence and the police officer deems it essential to arrest such a person not only to prevent him from committing any further such offence but also with an aim for proper

investigations and preventing such person from eroding the evidence so available against that person as well as to ensure that he may not abscond. With the amendment of Cr.P.C. with effect from 01.11.2010, Section 41-A has been added enabling such a police officer on receipt of credible information against any person and harboring a reasonable suspicion that the person has committed a cognizable offence, to issue him a notice to appear before the concerned police officer at a place and time so necessitated and it shall be the duty of that very person to ensure due compliance and in case it is so necessitated to arrest him.

Section 41-B of Cr.P.C. provides a procedure of such an arrest with duties which such an officer arresting a person is bound to perform. It needs to be reiterated here that with the provisions of Section 42 of Cr.P.C. it is necessitated that whenever a person is accused of having committed a non-cognizable offence, he is under a legal obligation to give his name and residence to facilitate his whereabouts which would enable the police officer to bring about better investigations as and when required and in case of failure to do so or giving of a wrong address entails arrest of the person or execution of a bond on that very reasons.

Sections 47 and 48 of Cr.P.C. empower such a police officer for search of the place so authorized the police officer carrying

an authority to do so as well as the pursuit of offenders in other jurisdictions at any place anywhere in the country in India.

The following chart would picturise these procedural aspects for appreciating such statutory provisions of procuring the presence of a person accused of an offence.

Table: Procuring the appearance of accused in Court

By issuing summons	If accused happens to be in Court, by requiring him to execute bond for appearance (S. 88)	By arresting the accused
Summons are issued - (i) Ordinarily in all summons cases; [S. 204 read with S. 2(w)] (ii) Also in warrant cases at Court’s discretion; [S. 204 read with S. 2 (x)] Note – Personal attendance of accused in Court may be dispensed with at Court’s discretion. [S. 205]		
With warrant	Without warrant	
Warrant is issued – (i) Ordinarily in all warrant cases; [S.204 read with S.2(x)] (ii) Even in summons cases, if necessary; [S.87] (iii) In case of breach of bond for appearance under Section 88. [S.89]	(i) By police officer; [S.41, S.42] (ii) By police officer in charge of police station; [S. 41(2)] (iii) By a Magistrate; [S.44] (iv) By private person; [S.43] Exception created in case of members of Armed Forces. [S.45]	

Chapter VI has been provided with a definite purpose to lay down **process to compel appearance** of a person which may be

by way of summons which could be in a manner as detailed under Sections 62 to 69 of Cr.P.C. and in case the Court feels it so may issue warrants of arrest as provided in Part B of Chapter VI and the latter deals with the manner and procedure of issuance and execution of such warrants of arrest and by virtue of Sections 70 to 81 of the Cr.P.C. different eventualities have been provided for and Section 70(2) makes it clear that every such warrant shall remain in force unless it is cancelled by the Court or until it is so executed. Therefore, by all this procedure, provisions have been well enshrined to lay a meaningful process so that there may be due adherence to the same except where there are certain exceptions provided for under any relevant law.

In Part C of Chapter VI, the procedure prescribed for making a proclamation and attachment has been laid down. Section 82 deals with an eventuality where a person fails in spite of issuance of warrants to put in appearance and tries to conceal himself, the Court may for the reasons if is of the opinion that warrants could not be executed, may publish a written proclamation thus requiring that person to appear on the time, date and place so specified therein. Section 82(2)(i) deals with the manner of publication of a

proclamation. Section 82 Cr.P.C. is reproduced below to lay emphasis, which provides as follows:

“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, 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-sections (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).”

The same has to be followed by attachment of property of the person absconding in terms of Section 83 of the Cr.P.C. and entertainment of claims and objections to attachment; release, sale and restoration of attached property and appeals from order rejecting an application for restoration of attached property. By another mode of

such procedure, Part D of this Chapter has enacted rules regarding process prescribing issuance of warrants in lieu of or in addition to summons.

The law with a definite motive and purpose, to ensure that an absconding person does not hamper collection of evidence which may be of vital importance for the prosecution before the Court, has in its wisdom laid down provisions of Section 299 Cr.P.C. which empowers the Court where a person who is accused of an offence having absconded and there is no prospect of his arrest whereby the Court may record depositions of such witnesses which may prove to be evidence against him pertaining to that very allegation at the inquiry or trial and which lays down the value of such an evidence if that person subsequently is incapable of giving evidence and thus, adequately secures the evidence for the future records at the trial if so necessitated.

The law to strengthen due recourse to justice has brought about an amendment in the Indian Penal Code (in short, 'IPC') with effect from 23.06.2006 by introducing Section 174-A of the IPC whereby failure of a person to appear in consequence of such a proclamation exposes him to imprisonment as well as fine or both.

This amendment arms the Courts to help the investigating agencies without the possibility of violation of human rights.

A close look at the wording of this statutory provision makes it emphatically clear that the moment a person fails to comply with the proclamation issued under Section 82(1) of the Cr.P.C. in not appearing at the time, place and date so detailed in the proclamation, would be subject to punishment with imprisonment or with fine or both and therefore, the moment he does not abide by such a proclamation an offence is deemed to have been committed in terms of this provision. The very purpose of bringing about an amendment by introducing such a punishment is purely with a view and intent to give the authorities and the Court more teeth to deal with such irresponsible persons who do not show respect for the law of the land and thus, by all means the moment that person undermines the sanctity of the law, he is deemed to have committed another cognizable offence exposing him to further punishment, may be by way of imprisonment or fine.

The million dollar question that has come to be addressed before this Court by a battery of lawyers representing various petitioners before this Court is if once a person has been declared to be

a proclaimed offender, what recourse is available to him under the law?

Though with much fanfare, learned counsel for many of the petitioners have sought to impress upon the Court that Section 482 Cr.P.C. by way of exercise of inherent powers of the Court can by no means restrict the powers of the Court and which can be used without hesitation in such a given situation. In the light of the settled law laid down by the Hon'ble Supreme Court of India in '**State of Haryana and others v. Ch.Bhajan Lal and others**' 1992 AIR SC 604, that such inherent powers are to be sparingly used in the rarest of the rare cases to meet the ends of justice and cannot be exercised merely at the asking of a party.

Though on behalf of one of the respondents, Mr.Gaurav Tyagi, Advocate has sought to place reliance on '**Roku Sandhu v. State of Punjab**' 2012(4) AICLR 758 and '**Subhash v. State of Punjab**' 2012(2) RCR (Criminal) 514 wherein this Court in a Single Bench view has sought to lay down the proposition that normally a person who is declared as proclaimed offender is required to first move the Court which declared him so and raise all such objections including the very legality and validity of a proclamation so issued against him and that unless the petitioner submits himself to the

jurisdiction of the said Court which has declared him so and seeks relief against the order declaring him to be a proclaimed offender, a petition under Section 482 Cr.P.C. is not maintainable, and further has placed reliance on '**Mehnga Singh v. State of Punjab**' 2002(2) RCR (Criminal) 501 to bring about thrust in his arguments that normally in such a situation the proclaimed offender needs to appear before the Court concerned and challenge with reasonableness the order declaring him to be a proclaimed offender and to show his justification.

Another facet, as sought to be brought about by one of the counsel representing respondents by placing reliance on '**Madhu Limaye v. State of Maharashtra**' 1978 AIR (SC) 47 to enforce his views and submissions that since an order declaring a person to be a proclaimed offender is an interlocutory order and therefore, even a revision does not lie against such an order.

To supplement the submissions of Mr.Gaurav Tyagi, Mr.Gurveer Sidhu, Assistant Advocate General, Punjab representing the State has placed reliance on '**Lavesh v. State (NCT of Delhi)**' 2012(4) RCR (Criminal) 240; '**Puneet Sharma v. State of Punjab and another**' (CRM-M-1222-2013 decided on 10.04.2013); '**Kuljinder Singh v. State of Punjab and others**' (CRM-M-20318-

2011 decided on 19.07.2011); ‘Kamaljit Singh v. State of Punjab’ (CRM-M-15696-2011 decided on 18.07.2011) and ‘Deeksha Puri v. State of Haryana’ 2013(1) RCR(Criminal) 159 to impress upon the Court that where a person absconds and conceals himself to warrants of arrest and order declaring him proclaimed offender, is not either entitled to relief of anticipatory bail under Section 438 Cr.P.C. nor if there is no infirmity in the order under Section 82 Cr.P.C. can seek quashment of the same.

Not much benefit can be drawn by learned State counsel out of **Kuljinder Singh’s and Kamaljit Singh’s case (supra)** on account of factual disparity and different question of law involved. Though in **Deeksha Puri’s case (ibid)** His Lordship of this Court has sought to draw a distinction between the various provisions of law including the one under Section 229-A IPC which was brought about by way of amendment with effect from 23.06.2006 but that was purely for persons who have failed to appear after being released on bail on bonds to face the process of the Court. Though the conclusion drawn by conjoint reading of these provisions whereby it has been held that the moment a proclaimed offender is arrested or appears at the place and time required by the Court or surrenders before the Court or authority issuing warrants or proclamation, as the case may be, the

order of declaration of proclaimed offender would cease to be operative. Certainly this Court with due apologies holds a different view that once at a given point of time an offence has been committed, any such subsequent event and in the present case arrest of the person or his surrender could not absolve him of the likely consequences arising out of the commission of offence under Sections 174-A and 229-A of IPC and thus, cannot wash off his criminal act and must under all means face the law and the consequences arising out of his such an act against the law.

The next question that comes to the mind of the Court, though not addressed in the submissions of learned counsel for the parties, is whether an order passed by virtue of Section 82(4) Cr.P.C. declaring a person to be a proclaimed offender falls within the definition of 'interlocutory order' or not and if so, whether a revision lies against such an order or the same can be addressed to by way of a petition under Section 482 Cr.P.C.?

Though Cr.P.C. is totally silent as to the definition of the term 'interlocutory order' but over a period of time by various pronouncements a definite definition has crystallized where it means an order which is passed at some intermediate stage to a proceedings generally to advance the cause of justice for the final determination of

the rights between parties and if it is so by virtue of Section 397(2) Cr.P.C. a revision against such an order is clearly barred. Though there has been divergent expression of opinions on this but one of the tests to be applied by the Courts as in the case of **Madhu Limaye (ibid)** “it is neither advisable nor possible to make a catalogue of orders to demonstrate which kind of orders would be final and then to prepare exhaustive list of those type of orders which fall in between the two”. Therefore, to be an order rejecting the plea of the accused on a point which when accepted would conclude the particular proceeding cannot be termed to be an interlocutory and an order which may be conclusive with respect to the stage at which it is made shall not be treated as an interlocutory order and which was the definition assigned in the case of ‘**Amar Nath v. State of Haryana**’ (1977) 4 SCC 137. At the same time, Courts must ensure that any such mischief which may arise out of such narrow interpretation may not suppress the very spirit of the law and in the light of **Heydon’s Rule of interpretation** such a definition needs to be confined and interpreted within the four corners of the spirit and letter of the law. Though this Court has suo-motu made much efforts to lay hands on any such guidance of the Hon’ble Supreme Court pertaining to cases of proclaimed offenders but none could be noticed which could be a

guiding star in this endeavour to do justice to the petitioners before this Court and the ratios of this Court, as have been detailed in the foregoing paragraphs of this judgment, could not be of much help, and what one could finally conclude is that such an order declaring a person to be a proclaimed offender is certainly to the mind of this Court is an intermediate order which though had also evaded definition but their Lordships in '**Rajendra Kumar Sitaram Pande v. Uttam**' 1999 AIR (SC) 1028 had held while interpreting the provisions of Section 397(2) Cr.P.C. to have been used in a restricted sense and not in a broad artistic sense holding that it merely denotes orders of purely interim or temporary nature which do not decide or touch important rights or liabilities of the parties and holding out that any order which substantially affects the rights of the parties cannot be said to be an interlocutory order and therefore giving a wider interpretation and liberal construction to the word 'interlocutory order' has termed it to be an intermediate or quasi-final order amenable to revision. As discussed above, the term 'interlocutory order' denotes orders of purely interim or temporary nature which do not decide or touch important rights or liabilities of the parties. The order under Section 82(4) is certainly not an interlocutory order reason being:

- (1) The person who is declared as a proclaimed offender could be simultaneously prosecuted under Section 174-A of IPC and he has to face separate trial for this offence which is not a compoundable offence.
- (2) The Court can also under Section 83 Cr.P.C. attach the property belonging to proclaimed person.
- (3) The Court can record evidence under Section 299 Cr.P.C. in his absence which certainly affects the right of fair trial because that particular evidence can be used against him.
- (4) No finding or sentence is revisable by reason of error, omission or irregularity in proclamation order.
- (5) A statement in writing by the Court issuing the proclamation shall be conclusive evidence that requirements of Section 82(2) have been duly complied with.
- (6) And from another angle, this order declaring the accused as a proclaimed offender puts to halt the whole trial and cases are lingering for many years which ultimately is to the prejudice to the victims.

Therefore, on the basis of the above said reasoning it might be rightly concluded that order declaring a person as proclaimed offender is purely “intermediate or quasi-final” order which certainly touch the rights and liabilities of parties and thus amenable to revision.

However, in various pronouncements of this Court as well as Hon’ble the Supreme Court in **‘Lavesh v. State (NCT of Delhi) 2012(4) RCR (Criminal) 240; ‘State of Madhya Pradesh v. Pardeep Sharma’ 2014(1) RCR (Criminal) 269 SC; ‘Roku Sandhu v. State of Punjab’ 2012(4) AICLR 758; and ‘Harbans Singh Gill v. State of Punjab’ 2008(4) RCR (Criminal) 447** wherein all these ratios have been considered, an opinion has come forth by way of resultant effect that it is for the accused so declared to be a proclaimed offender, to first surrender before the Court and then to seek a relief and the Court consequent thereupon would evaluate and adjudge his merits for entitlement of such a relief being prayed for.

Thus from it all, it needs to be concluded that in not every order so impugned, challenge can be had to by the exercise of powers under Section 482 Cr.P.C. and where statutory remedies are available a party needs to first exhaust all these remedies and in case if still is aggrieved over it, is well within its rights to come to this court for

invoking inherent jurisdiction and satisfying the conscience of the Court as to imminent necessity of showing indulgence thereto.

Though by all means it could not be put to question that powers under Section 482 Cr.P.C. of a High Court cannot be restricted by any means and wherever and whenever it is necessitated to advance the cause of justice such inherent powers can be exercised by the Court but the same has to remain within the realm of practical approach and that thereby not an occasion of overstepping the jurisdiction and powers of a Court to undo the purpose of law and the system.

The question for consideration is whether the High Court is justified in invoking its extraordinary powers under Section 482 Cr.P.C. in such type of situations.

In a catena of case law, reference of which can be taken note of '**State of Haryana and others v. Ch.Bhajan Lal and others**' 1992 AIR SC 604, and '**State of Punjab v. Davinder Pal Singh Bhullar**' 2012(1) RCR (Criminal) 126 of Hon'ble the Apex Court holding unbridled powers of the High Courts in the exercise of its inherent powers. But one needs to keep away from having a glance with tainted glasses at these provisions else it will render otiose statutory provisions by resorting to such exercise of inherent powers.

In an earlier view in the case of **‘Mohit @ Sonu and another v. State of Uttar Pradesh and another’ 2013(3) RCR (Criminal) 673** and in a subsequent view of the Hon’ble Supreme Court in **‘Urmila Devi v. Yudhvir Singh’ 2013(4) RCR (Criminal) 899** their Lordships were of the opinion that where there was any statutory provision available, the Courts must have recourse to that statutory provision and should restrain itself from going ahead by the exercise of its inherent powers under Section 482 Cr.P.C. In a diametrically opposed subsequent view of the Hon’ble Apex Court in **‘Prabhu Chawla v. State of Rajasthan and another’ 2016(4) RCR (Criminal) 270** their Lordships with due apologies have considered **‘Dhariwal Tobacco Products Ltd. and others v. State of Maharashtra and another’ 2009(1) RCR (Criminal) 677** and **Mohit @ Sonu’s case (ibid)** but it was never brought to the notice of their Lordships as to the ratio laid down in **Urmila Devi’s case (ibid)** and it was the interpretation of Sections 482 and 397 Cr.P.C. which was taken into consideration holding exercise of inherent powers where abuse of the process of the Court or other extraordinary situation excites Court’s jurisdiction, but the limitation is **‘self-restraint and nothing more’** and thus, have sought to discourage repeated intervention of the High Courts in such matters and nothing bars the High Court to examine such matters in

appropriate cases exercising its inherent powers and thus, have stressed on the opening wording of Section 482 Cr.P.C. which begins with non-obstante clause.

Though it cannot be laid down that availability of a remedy under Section 397 Cr.P.C. completely forbids exercise of powers under Section 482 Cr.P.C. but for the sake of judicial discipline impels this Court to hold that unless and until it is so warranted and where there is a case of extreme hardship and immediate need for showing indulgence and intervention by the Court, such an approach would be appropriate for the exercise of powers under Section 482 Cr.P.C. and which precisely had been laid down in **Dhariwal Tobacco Products Ltd.'s case (ibid)** that availability of a statutory remedy cannot be the sole determining factor to deny a relief under the provisions of Section 482 Cr.P.C. Similar was the opinion voiced in '**M/s Pepsi Foods Ltd. v. Special Judicial Magistrate**' **1997(4) RCR (Criminal) 761** where reference was also taken note of the law laid down in **Bhajan Lal's case (ibid)** holding that exercise of powers under Section 482 Cr.P.C. would depend upon facts and circumstances of each case and which has to be exercised but with the sole purpose to prevent the abuse of the process of the Court.

Attention of this Court is repeatedly drawn to the broader principle that inherent powers of the High Court should not be invoked especially in case where the absconder himself is in conflict with law and knowingly disobeys the same. In the light of the rule that has come to evolve that ***'justice is the insurance which we have on our lives and property, obedience is the premium which we pay for it'*** as has been remarked by **Willam Penn**, a famous philosopher and founder of the province of Pennsylvania hundreds of years ago.

Thus from it all, it flows that what trickles down from these various ratios, the legal position as to exercise of inherent powers of this Court though are sweeping and awesome but can only be invoked either to give effect to an order passed under the Cr.P.C. or to prevent any abuse of the process of the Court or otherwise to secure the ends of justice but at the same time these powers have to be exercised in an appropriate case to render justice, may be even beyond the law to something of a rarity, a sparingly wielded one. It would be totally justifiable for invocation of these extraordinary powers by the Court if after considering the bona fides which means the cleanliness of the hands of the seeker or if he is the fugitive having absconded from justice, has jumped bail without any reasonable and sufficiently excusable reason or for an ulterior purpose, to enable him to

manipulate as to hostility of the witnesses or in any such improper conduct, may be a good ground justifying refusal by the Court to exercise such powers. Thus, to the mind of this Court in cases where a person has been declared as a proclaimed offender the element of conscience is the general principles that needs to be considered though cannot be exhaustively elaborated but broadly speaking has to be based on judicial wisdom, sagacity, sobriety and circumspection has to be pressed into service as to identify the rarest and exceptional cases where invocation of such an extraordinary inherent jurisdiction is warranted to bring about redressal to Courts and justice.

From these discussions, it flows the likely situations and their likely solutions which can come to the aid of or against a person who has been declared a proclaimed offender by the exercise of powers under Section 82(4) Cr.P.C. which are only illustrative and not exhaustive and are as follows:

1. Where a person so declared was never within the knowledge of being arrayed as an accused and was never reasonably served with the process of the Court or in a situation where for obvious reasons in spite of being available had sought to be proceeded against on the basis of wrong and imaginary particulars of residency or may be

residing abroad when the process against him was initiated. In such a case this Court is of the opinion that such an order declaring a person so placed in this situation to be having a bona fide case, a genuine grievance of a process having been undertaken against him at his back, contrary to the well enshrined principles of law and therefore, has every right to come to this Court under the aid of Section 482 Cr.P.C. as it is within the ambit where there is an exceptional circumstance to meet the ends of justice.

2. There could be persons who have been so declared who have knowingly and without any justifiable reasons, in spite of being served and aware of the proceedings before the authorities, have knowingly and intentionally evaded their appearance to attain sinister gains and thus, his intentions being impregnated with malice and fraud, the Court needs to discourage such persons for invoking the aid of Section 482 Cr.P.C.
3. Proclaimed offenders so declared who have participated at one point of time in the process either at the investigating stage, before the Court during remand or at the trial and

for such placed persons the Court must look into the truthfulness and bona fide of his grounds what kept him away from the Court and after lifting the veil to come to a conclusion whether it was a knowingly conduct for some undue attainment of gain or may be for prolonging the proceedings the Court needs to discourage such persons for invoking the aid of Section 482 Cr.P.C.

4. There could be a situation where the person for reasons beyond his control may be a bereavement, a mental state where the person for reasons beyond his control is unable to appear and adhere to the process of the concerned agency, may be the investigating or the Court and if it is found to be so the Court has every reason to bring about the ends of justice taking into consideration the bona fide of the person, and may exercise such powers in appropriate cases where the ends of justice so demand.
5. Though not contemplated but a situation may crop up where a person for any of the above situations having been declared as a proclaimed offender can chose to get such an order nullified by effecting a compromise and without surrendering before the authorities in abide of the orders

that have already been passed against him, though is quite difficult a situation, even if it is a situation where the person so declared has committed a compoundable offence what to talk of commission of non-compoundable offence, it would sub-serve and the law so demands that he needs to surrender before the law before he is entitled to any such relief and thus, if so covered by any of the above detailed categories, needs to have recourse to law, may be by challenging the very validity of the orders declaring him to be a proclaimed offender or surrendering himself before the law and can by no means keep himself away by seeking aid and protection by securing anticipatory bail under Section 438 Cr.P.C. purely on the basis of a compromise with the other side when it is the State against whom once he is declared to be a proclaimed offender, has much to hold at stake for administration of justice and law of the land and therefore, by no means can nullify such orders at the back of the State by entering into some sort of an arrangement by way of compromise with the opposite party, the victim or the complainant as the case may be.

6. Though in one of the petitions learned counsel for the petitioner has sought to assail an allied point that the principal accused has since been acquitted necessitates setting aside of the order declaring the petitioner to be a proclaimed offender as well as seeking his acquittal on the basis of that very judgment, certainly is too preposterous a proposition which is legally not tenable for which this Court seeks support from the ratio laid down by Hon'ble the Supreme Court in '**Rajan Rai v. State of Bihar**' **2005(4) RCR (Criminal) 885** where the principle of '*falsus in uno, falsus in omnibus*' was taken into consideration holding that the same was inapplicable in this country and is only to be treated as a rule of caution. Reliance is also placed on another view of Hon'ble Apex Court in '**Megh Singh v. State of Punjab**' **2003(4) RCR (Criminal) 319**, holding that acquittal of a co-accused does not by itself entitles the other accused in the same case to acquittal and therefore, in the light of ratio laid down in '**Gorle S. Naidu v. State of A.P.**' **AIR 2004 SC 1169** in all trials the appreciation of evidence in terms of Section 3 of the Evidence Act and credibility of the same

has to be individually taken note of and therefore, to the mind of this Court mere acquittal of a co-accused in a trial does not per-se entitles the other co-accused who is facing separate trial to such a relief, squarely answers the contentions of the counsel for this petitioner and the unsoundness of his averments that since his co-accused stands acquitted entitles him to setting aside of such an order declaring him a proclaimed offender as well as his acquittal too. The same is thus brushed aside.

Since it has already been held by this Court in the foregoing paragraphs of this judgment that an order declaring a person to be a proclaimed offender in other situations where there has been total adherence to procedure laid down under the law, especially in terms of Section 82(4) Cr.P.C., needs to challenge if so impugned by way of revision under the statutory provisions of Sections 397/401 Cr.P.C. and it is only in situations where there are exceptional circumstances as discussed herein, resort can be had to the inherent powers under Section 482 Cr.P.C., where apparently there is clear abuse of the process of the Court and the law.

It has also been brought to the notice of the Court during the course of arguments that some Courts though wrongly, are firmly of the view that such orders are not amenable to revision or cannot be recalled even if the person surrenders himself before the Court concerned which has declared him to be a proclaimed offender, is certainly a wrong and constricted approach. Where the person so declared surrenders before the Court concerned, the Court needs to consider his case for bail and adopt legitimate legal recourse as provided under the Cr.P.C. as may be necessitated thereafter. Thus, it would be appropriate for the Court concerned to recall such an order but its likely fallout in consequence thereof remaining intact after a person had surrendered so that it may not become an irritant by a mere entry into the police record maintained regarding proclaimed offenders which could have its own affects in the future course of time and the Courts need to be cautious to remove this imbroglio which may come in the way of leading a free life by that individual.

In the light of foregoing discussions and observations, this Court finally concludes that petitions bearing CRM-M No.5341 of 2016; CRM-M No.2508 of 2016; CRM-M No.14238 of 2016; CRM-M No.5470 of 2016; CRM-M No.7098 of 2016; CRM-M No.5793 of 2016; CRM-M No.40522 of 2015; CRM-M No.4776 of 2016; CRM-

M No.7272 of 2015; CRM-M No.13004 of 2016; and CRM-M No.2317 of 2016 are hereby allowed and the respective impugned orders passed therein declaring the petitioners to be proclaimed offenders are hereby set aside by the exercise of powers under Section 482 Cr.P.C. directing them to appear and face the trial/process of law accordingly.

Petitions bearing CRM-M No.12547 of 2016; CRM-M No.21891 of 2014; CRM-M No.15394 of 2016; CRM-M No.8701 of 2016; CRM-M No.3451 of 2016; CRM-M No.21686 of 2016; CRM-M No.19357 of 2016; CRM-M No.3824 of 2016; CRM-M No.19308 of 2014; CRM-M No.43371 of 2015; CRM-M No.16762 of 2016; CRM-M No.44285 of 2015; CRM-M No.14245 of 2016; CRM-M No.8071 of 2016; CRM-M No.25835 of 2015; CRM-M No.17061 of 2016; CRM-M No.12525 of 2015; CRM-M No.17878 of 2016; CRM-M No.16847 of 2016; CRM-M No.12394 of 2016; CRM-M No.5311 of 2016; CRM-M No.26370 of 2015 and CRM-M No.26746 of 2015 are hereby dismissed. However, without extinguishing their respective rights under Sections 397/401 Cr.P.C. The petitioners therein are directed to surrender before the authorities and submit themselves before the law which would have its recourse in accordance with the prescribed procedure.

Thus, all these petitions are hereby disposed off in those terms. However, any observation made herein would have no bearing whatsoever on the final outcome of the cases pertaining to these petitioners.

(FATEH DEEP SINGH)
JUDGE

November 23, 2016
rps

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