

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-41828 of 2016

Date of Decision: December 6, 2016

Nafseem

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Ms. Monisha Lamba, Advocate
for the petitioner.

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M.M.S. BEDI, J. (ORAL)

Petitioner along with his co-accused was booked in a case of murder and attempt to murder. The co-accused of the petitioner are facing trial. It has been informed that six PWs have already been examined.

Petitioner through instant petition challenges the order declaring him a proclaimed offender vide order dated May 3, 2016 (annexure P-9).

A perusal of the order dated May 3, 2016 indicates that the Court has not only ordered the attachment of the property of the petitioner

but has also issued direction for registration of FIR under Section 174 A IPC.

With the assistance of counsel for the petitioner I have gone through the interim order annexure P-10 dated March 3, 2016, by virtue of which a proclamation was ordered to be issued against the petitioner for March 31, 2016. On March 31, 2016, statement of the police official was recorded but the Court formed an opinion that the statutory period of one month from the date of proclamation had not elapsed as such the case was adjourned for May 3, 2016 for presence of the accused. It is apparent from the said order that no notice was issued to the petitioner for appearance on May 3, 2016. It cannot be presumed under law that the petitioner who was not present on March 31, 2016 would have notice for appearance on May 3, 2016. On May 3, 2016, the petitioner was declared a proclaimed offender. While declaring the petitioner a proclaimed offender, notice was issued to Tehsildar for attaching the property of the petitioner as well as registration of case under Section 174 A IPC.

The validity of the order dated May 3, 2016 has been questioned through this petition under Section 482 Cr.P.C.

Notice to Advocate General, Haryana.

On the asking of the Court, Mr. G.S. Salwara, DAG, Haryana, accepts notice. Copy given.

The statutory irregularity and violation of provisions of Section 82 Cr.P.C. is writ large. Declaring a person a proclaimed offender entails

serious consequences. The provisions of Section 82 (1) Cr.P.C. requires that a person against whom warrants are issued by the Court and who has been absconding or concealing himself to avoid execution of the warrant, the Court may publish 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.** The proclamation requiring the petitioner to appear on March 31, 2016 was void ab initio as the Court should have given specific date for publication and thereafter clear more than 30 days time from date of publication to appear in the Court. The statutory provisions of Section 82 (1) Cr.P.C. is not mere formality but has got the effect of curtailing the life and liberty of an accused as such the provision being mandatory, has to be followed strictly. The apparent error in publication and the petitioner having not been given statutory period of 30 days to appear in the Court and petitioner having no notice for appearance on May 3, 2016 when he was declared a proclaimed offender, the order declaring him proclaimed offender deserves to be set aside.

The petition is allowed. The order dated May 3, 2016, annexure P-9, declaring the petitioner a proclaimed offender is hereby set aside on technical legal ground.

December 6, 2016
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.