

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

281

CRM-M-40772-2022 (O&M)

Date of Decision: 22.09.2022

Bhawna Kirpal

...Petitioner

Versus

Assistant Director, Directorate of Enforcement

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Sanjay Kaushal, Senior Advocate, with
Mr. Saurabh Kapoor and Ms. Ojaswini, Advocates,
for the petitioner.

Mr. Satya Pal Jain, Assistant Solicitor General of India, with
Ms. Sharmila Sharma, Senior Panel Counsel
for the respondent/UOI.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 09.05.2019 (Annexure P-1) passed by the learned Judge, Special Court, Chandigarh vide which the petitioner was declared a proclaimed offender.
2. At the time of issuance of notice of motion on 08.09.2022, following contentions raised on behalf of the petitioner were noticed:

“The learned counsel for the petitioner submits that the procedure prescribed under Section 82 Cr.P.C. for declaring a person as proclaimed offender has not been complied with in letter and spirit inasmuch as neither anyailable warrants nor any non-ailable warrants has been issued for securing presence of the petitioner and that proceedings under Section 82 Cr.P.C. had been initiated only on the basis of report of the serving official, who was entrusted with the task of effecting service of summons only.

The learned counsel for the petitioner has submitted that in any case the petitioner had left the country on 14.6.2018 whereas the complaint was

dated 18.7.2018 and that it was much later i.e. on 12.3.2019 that proceedings under Section 82 Cr.P.C. came to be initiated.”

3. Today, reply on behalf of the respondent has been filed, which is taken on record. In its reply, the respondent has furnished details with regard to the efforts made for effecting service upon the petitioner in a tabulated form, which is reproduced herein under:

S. No.	Summons Detail	Service effecting address	Service Report dated	Service effecting official	Remarks
1.	Summons dated 18.08.2018 issued to M/s G B Creative Line through its Proprietor Bhawna Kirpal	H.No.531, Sector 16D, Chandigarh	30.08.2018	Nishant Sharma, AEO ED Chandigarh	Bhawna Kirpal was not present at the premises. Owner confirmed that the premises was vacated by the accused petitioner on 31.07.2018
2.	Summons dated 18.08.2018 issued to M/s G B Creative Line through its Proprietor Bhawna Kirpal	306, Industrial Area A, Near Cheema Chowk, Ludhiana 141003	30.08.2018	Nishant Sharma, AEO ED Chandigarh	As the residential premises was vacated by the accused petitioner thus further efforts were made for service of summons on official premises of G B Creative Lines.
3.	Summons dated 07.09..2018 issued to M/s G B Creative Line through its Proprietor Bhawna Kirpal	306, Industrial Area A, Near Cheema Chowk, Ludhiana 141003	13.09.2018	Nishant Sharma, AEO ED Chandigarh	Bhawna Kirpal was not available at the office premises. Gaurav Kirpal was available at the office premises but refused to disclose the accused petitioner's whereabouts.
4.	Summons dated 21.09.2018 issued to M/s G B Creative Line through its Proprietor Bhawna Kirpal	306, Industrial Area A, Near Cheema Chowk, Ludhiana 141003	01.10.2018	Nishant Sharma, AEO ED Chandigarh	Bhawna Kirpal was not available at the office premises. Hence summons could not be served.
5.	Summons dated	306,	01.11.2018	Nishant	Bhawna Kirpal

	21.09.2018 issued to M/s G B Creative Line through its Proprietor Bhawna Kirpal	Industrial Area A, Near Cheema Chowk, Ludhiana 141003		Sharma, AEO ED Chandigarh	was not available at the office premises. Gaurav Kirpal was present and told that he was unaware about the whereabouts of Bhawna Kirpal. He further refused.
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4. Nothing has been shown to this Court so as to establish that any bailable or non bailable warrants had ever been issued for securing presence of the petitioner.

5. Section 82 Cr.P.C. for the sake of ready reference reads as follows:

“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 (45 of 1860) 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).”

6. Since in the present case, the trial Court seems to have resorted to provisions of Section 82 Cr.P.C. straightway without having issued any bailable or non bailable warrants for securing the presence of the petitioner, the same cannot be said to be compliance of Section 82 Cr.P.C. in letters & spirit. In these circumstances, impugned order dated 09.05.2019 (Annexure P-1) cannot sustain and is hereby set aside.
7. Since learned senior counsel has informed that the petitioner is presently abroad and shall appear before the learned trial Court in the shortest possible time, the petitioner is directed to appear before the trial Court within a period of 21 days from today.
8. Petition stands disposed of accordingly.

22.09.2022

Vimal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**