

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

**Criminal Revision No. 348 of 2024 (O&M)
Date of Decision: 15.04.2024**

Chamkaur Singh @ Chamkor Singh and another
..... Petitioners

Versus

State of Punjab
..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. P.K.S. Phoolka, Advocate
for the petitioner.

HARKESH MANUJA, J. (ORAL)

The petitioners, by way of present revision petition, seeks setting aside of the order dated 03.01.2024 passed by learned Sessions Judge, Mansa, whereby they were declared as proclaimed offenders.

[2] Having been implicated in FIR No. 144, dated 11.08.2022, under Sections 302, 450, 323, 148, 149 & 506 of IPC, registered at Police Station Bhikhi, District Mansa, the petitioners alongwith two other co-accused were found innocent and final report was submitted against the other accused persons by the Investigating Agency on 07.11.2022. It may be pointed out here that initially, petitioner No. 1 (Chamkaur Singh @ Chamkor Singh) was arrested on 20.08.2022, while petitioner No. 2 (Harnam Singh) arrested on 14.08.2022 by the Investigating Agency and having been found innocent, they were released later.

[3] During the trial, on account of an application under Section 319 Cr.P.C. having been filed on behalf of prosecution, the petitioners were summoned as additional accused vide order dated 07.07.2023 passed by the

trial Court. The petitioners prayed for grant of anticipatory bail which were declined vide order dated 20.07.2023. The petitioners approached this Court for similar relief on 27.07.2023, wherein though notice was issued, however, they were not granted interim protection, resulting into continuation of summoning proceedings before the trial Court against them, thereby culminating into passing of the order dated 03.01.2024, whereby they were declared as proclaimed offenders.

[4] Impugning the aforesaid order dated 03.01.2024, learned counsel for the petitioners submits that the petitioners never absconded from the Court proceedings as they were availing their statutory remedies, provided under Section 438 Cr.P.C. He also points out that the proceedings under Section 82 Cr.P.C. was never effected against the petitioners by following the mandatory procedure laid down therein and thus, the same were wholly vitiated.

[5] Notice of motion.

[6] Mr. Kewal Singh, Additional Advocate General, Punjab, accepts notice on behalf of respondent-State of Punjab, whereas Mr. J.K. Singla, Advocate, accepts notice on behalf of the complainant-Jarnail Kaur.

[7] Learned State Counsel, assisted by Mr. J.K. Singla, Advocate, representing the complainant, vehemently opposes the prayer made on behalf of the petitioners, while submitting that the petitioners being fully conscious of the factum of passing of the summoning order against them, did not appear before the Court concerned and tried to evade the process for *mala fide* reasons; thus, the impugned order warrants no interference.

[8] After hearing learned counsel for the parties and going through the paper-book, I find substance in submissions made on behalf of the

petitioners.

[9] A perusal of the statement of the executant police official, namely, Avtar Singh, Constable, recorded before the trial Court on 01.12.2023, shows that at the time of effecting the service of proclamation, the house of both the petitioners were found locked. Rather than making a fresh effort for effecting the proclamation upon the petitioners, the executant police official went alongwith carrying out compliance of the other modalities laid under Section 82 Cr.P.C. in a formal manner. Two separate statements of the aforesaid executant police official dated 01.12.2023 pertaining to both the petitioners, are reproduced hereunder:-

“ (1) *State Vs. Rura Singh etc.*

State of C Avtar Singh, No. 473/Mansa, P.S, Bhikhi

*I was deputed for service of proclamation orders of **Harnam Singh** son of Ram Singh, resident of village Samao, District Mansa. On 30.11.2023 I went to the given address and the house was locked at that time and proclaimed in loud voice with help of drum beat but accused was not found there. One copy of proclamation was affixed at the house of accused and another copy at common place i.e Sath and another copy outside the Court. My report is Ex. PAB. Accused is absconding intentionally so he may be declared as proclaimed offender.*

RO & AC

(Preeti Sahni)
Sessions Judge, Mansa
UID PB 0078
01.12.2023

“ (2) *State Vs. Rura Singh etc.*

State of C Avtar Singh, No. 473/Mansa, P.S, Bhikhi

*I was deputed for service of proclamation orders of **Chamkaur Singh** son of Tej Singh, resident of village Kot Fatta, District Bathinda. On 30.11.2023 I went to the given address and the house was locked at that time*

and proclaimed in loud voice with help of drum beat but accused was not found there. One copy of proclamation was affixed at the house of accused and another copy at common place i.e Sath and another copy outside the Court. My report is Ex. PAA. Accused is absconding intentionally so he may be declared as proclaimed offender.

RO & AC

(Preeti Sahni)
Sessions Judge, Mansa
UID PB 0078
01.12.2023 ”

[10] A perusal of the aforementioned statements shows that for the purpose of reflecting compliance of Section 82 (2) (i) (a) of Cr.P.C. as regards the proclamation been read out publically in some conspicuous place of the town or village in which the petitioners were residing, it has been stated that the proclamation was read in loud voice with the help of drum beat. It has nowhere been stated by the executant police official that the proclamation was ever read out publically in some conspicuous place of the town or village. On the contrary, the aforesaid statements reflect that the proclamation was read over loudly in front of the house of petitioners only, which clearly amounts to violation of Section 82 (2) (i) (a) Cr.P.C. and thus, vitiates the entire proceedings carried out against the petitioners, thereby declaring them as proclaimed offenders.

Furthermore, Section 82 Cr.P.C., which, in a way, regulates the liberty of an individual; thus, flows from Article 21 of the Constitution of India and as such, being inviolable, needs mandatory compliance on all counts, which is apparently missing in the present case.

[11] Resultantly, the present petition is **allowed** and the impugned order dated 03.01.2024 passed by the learned Sessions Judge, Mansa, is set aside.

[12] The aforesaid order shall, however, be subject to payment of costs of Rs. 10,000/- **each** to be deposited by the petitioners with the Poor Patients’ Welfare Fund of the PGIMER, Chandigarh, within a period of one week from the date of receipt of certified copy of this order.

April 15, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>