

2024.PHHC.119547



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

Sr. No.284-1**CRM-M-48079-2023 (O&M)****Date of decision : 11.09.2024**

Barinder Kumar

..... Petitioner

VERSUS

Income Tax Officer and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Aditya Dassaur, Advocate for the petitioner.

Mr. Ravinder Singh, AAG, Punjab.

KIRTI SINGH, J. (Oral)

The present petition has been filed under Section 482 Cr.P.C. for quashing the impugned order dated 10.11.2022 (Annexure P-5) passed by Chief Judicial Magistrate, Kapurthala, vide which the petitioner has been declared as proclaimed offender in case bearing CIS No: COMA-52-2018 titled as '*Income Tax Officer Vs. Barinder Kumar etc.*'

2. Learned counsel for the petitioner submits that the mandatory procedure prescribed under Section 82(1) of Cr.P.C. has not been duly followed and the petitioner was never served. He draws the attention of this Court to order dated 18.02.2019 and subsequent orders passed by learned trial Court vide which complainant/respondent No.1 was directed to furnish correct address of the petitioner for serving notice, however, the complainant/respondent No.1 did not furnish the correct address and the learned trial Court vide order dated 22.07.2019 had issued notice at the address mentioned in the complaint. Learned counsel for the petitioner, while drawing the attention of this Court to the complaint/Annexure P-1,

2024.PHHC.119547



wherein the address of the petitioner is mentioned as *Prop. M/s Sharma Building Material Store, Phillaur, District Jalandhar*, contends that the subsequent orders passed by learned Trial Court vide which Non-bailable warrants and proclamation proceedings were issued to be executed at the same address. He further contends that as per the provisions of Section 82(1), a proclamation shall be issued at the residential address and learned trial Court has inadvertently issued proclamation, under Section 82 Cr.P.C., at the place of work instead of the place residence. He further submits that the petitioner is willing to face trial and therefore, he may be granted one opportunity to appear before the trial Court.

3. Per contra, learned State counsel has opposed the present petition and submits that the learned trial Court has rightly declared the petitioner a proclaimed offender.

4. This Court has heard the learned counsel for the petitioner and the learned State counsel and has perused the paper-book.

5. It would be relevant to refer to the provision of Section 82 Cr.P.C. which provides for publication of proclamation against the person absconding. It reads as under:-

“(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;

2024.PHHC.119547



(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.

xxx xxx xxx xxx xxx”

6. A Co-ordinate Bench of this court vide order dated 23.08.2023 passed in CRM-M-41656-2023 titled as **‘Pardeep Kumar versus State of Punjab and another’** while issuing guidelines for issuance of a proclamation under Section 82 of the Code of Criminal Procedure, has observed as under :-

“xxx xxx xxx xxx xxx

Publication of proclamation–

iv. The publication of a proclamation, as outlined in Section 82(2) of the Code of Criminal Procedure, mandates adherence to all three prescribed modes, namely:

(a). The public reading of the proclamation in a conspicuous location within the town or village where the individual ordinarily resides.

(b). The affixation of the proclamation at a prominent spot at the individual's house or homestead.

(c). The display of the proclamation at a prominent location within the precincts of the court house.

v. All the aforesaid three modes of publication of a proclamation have to be adhered to. Failure to follow all or any of them renders the proclamation invalid in the eyes of the law. This is because the three sub-clauses (a) to (c) are mutually exclusive.

xxx xxx xxx xxx xxx”

7. The objective of the coercive mechanism prescribed under the Code of Criminal Procedure is to ensure that the accused remains present before the Court to receive the orders and punishments as are passed qua the accused. If the accused shows his sincere intention and desire to appear before the Court, then it would not be unjustified to protect him from being arrested.

8. Keeping in view the above submissions and considering the fact

that the accused was not served properly in compliance of provisions of

2024.PHHC.119547



Section 82(1) of Cr.P.C. and the guidelines laid down in *‘Pardeep Kumar versus State of Punjab and another’*(supra), this Court finds merit in the petition.

9. Accordingly, the petition is allowed. The impugned order dated 10.11.2022 (Annexure P-5) is hereby set aside, **subject to payment of Rs.10,000/- to be deposited in Poor Patient Welfare Fund, PGIMER, Chandigarh.** Petitioner is directed to surrender before the learned Trial Court within a period of 15 days and, in case he surrenders he be released on bail subject to the satisfaction of the learned Trial Court. Till then no coercive steps shall be taken against the petitioner.

(KIRTI SINGH)
JUDGE

11.09.2024
Kavita

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