



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

140

**CRM-M No.3508 of 2025
Date of decision: 22.01.2025**

Harish Garg

....Petitioner

Versus

Pawan Kumar Yadav

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Surinder Garg, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 528 of BNSS, 2023, for quashing of order dated 30.10.2024 (Annexure P-9) passed by the learned Judicial Magistrate Ist Class, Chandigarh in complaint NACT No.7763/2021 dated 12.10.2021, filed under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the NI Act'), whereby the petitioner was declared as proclaimed person.

2. Learned counsel appearing for the petitioner, *inter alia*, contends that a complaint under Section 138 of the Negotiable Instruments Act was filed against the petitioner on the ground of dishonouring of cheque bearing No.004081 dated 30.07.2021 amounting to Rs.2.00 lacs issued in favour of the complainant/respondent by the petitioner in discharge of his liability. He submits that the petitioner was subsequently summoned by the learned trial Court on 18.05.2023 for a hearing scheduled for 04.08.2023, after

2025:PHHC:009067



the respondent tendered the documents along with the complaint. However, the respondent intentionally mentioned an incorrect address in the complaint, stating House No.5-A instead of the correct address, House No.59-A, which led to improper service of summons and warrants.

3. Learned counsel for the petitioner further submits that despite the incorrect address, the respondent proceeded with the case, leading to the issuance of warrants and proclamation against the petitioner. The petitioner was not served with the summons or warrants due to the erroneous address, and as a result, he was wrongly declared as proclaimed person on 30.10.2024 (Annexure P-9). Aggrieved by the said impugned order dated 30.10.2024 (Annexure P-9), the petitioner has approached this Court by way of instant petition. It is contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court. Lastly, learned counsel for the petitioner submits that the petitioner undertakes to appear before the trial Court on each and every date of hearing.

4. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, present petition is being decided *in limine* without issuing notice to the respondent in order to save judicial time of the Court and also the litigation costs of the respondent.

5. While the scheme of criminal justice system necessitates

2025:PHHC:009067



curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

6. A perusal of the impugned order reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioner has absconded or is concealing himself. This Court in the judgment passed in ***Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506*** has held that the Court is first required to record its satisfaction before issuance of process under Section 82 of Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in ***Sonu Vs. State of Haryana 2021 (1) RCR (Crl.) 319***, it has been held that the conditions specified in Section 82 (2) Cr.P.C. for the publication of a proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity.

7. The sole purpose of issuance of non-bailable warrants or issuance of proclamation is to secure presence of the accused before the trial Court. The petitioner in the present case has himself come forward

2025:PHHC:009067



and has undertaken to appear before the trial Court on each and every date of hearing.

8. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 30.10.2024 (Annexure P-9), vide which the petitioner was declared proclaimed person as well as all the consequential proceedings emanating therefrom, are hereby set-aside.

9. The petitioner is directed to appear before the learned trial Court within a period of 02 weeks from today and on his doing so, he shall be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.10,000/- to be deposited with the PGI Poor Patient Welfare Fund, for wasting precious time of the Court.

10. The receipt of payment of costs imposed upon the petitioner must be presented before learned trial Court. Learned Court below is directed to grant bail to the petitioner only upon verification of the payment of said costs.

11. However, in case, the petitioner fails to surrender before the learned trial Court within the stipulated time period, the interim protection granted by this Court, shall be deemed to be vacated.

(HARPREET SINGH BRAR)
JUDGE

22.01.2025

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Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No