



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

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CRM-M No.7565 of 2025
Date of decision: 11.02.2025

Hari Singh and others

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Japneet Singh Wadhwa, Advocate and
Ms. Anu Chaudhary, Advocate
for the petitioners.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 528 of BNSS, 2023, for quashing of order dated 09.08.2018 (Annexure P-5) passed by learned Sub-Divisional Judicial Magistrate, Sultanpur Lodhi in FIR No.212 dated 27.07.2017, registered under Section 420 IPC at Police Station Sultanpur Lodhi, District Kapurthala, vide which the petitioners were declared as proclaimed persons.

2. Learned counsel appearing for the petitioners, *inter alia*, contends that the FIR (supra) was registered against the petitioners, along with co-accused Harjinder Singh Numberdar and Hardip Singh, on the basis of a statement made by complainant/respondent No.2, who is the petitioners' real father, by levelling the allegations of cheating and fraud in transferring, selling, and disposing of the complainant's agricultural land by using a forged and fabricated power of attorney in their own names. Additionally, the accused allegedly issued unlawful

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threats to sell the complainant's land situated in village Kular, Tehsil Shahkot, District Jalandhar, and extended life threats and to implicate him in a false case.

3. Learned counsel for the petitioners further submits that the co-accused of the petitioner namely Harjinder Singh, who faced the full length trial has already been acquitted by the learned trial Court on 05.07.2022 and the petitioners were never served with the summons or warrants issued by the learned trial Court, and as a result, they were wrongly declared as proclaimed persons on 09.08.2018 (Annexure P-5).

4. Learned counsel for the petitioners further submits that they were falsely implicated and the allegations pertains to a dispute which is purely civil in nature and the factual ingredients of Section 420 IPC are not attracted at all and aggrieved by the aforesaid impugned order dated 09.08.2018 (Annexure P-5), the petitioners have 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 petitioners submits that the petitioners undertake to appear before the trial Court on each and every date of hearing.

5. Notice of motion.

6. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in the Court, accepts notice on behalf of respondent – State and supports the order passed by the learned trial Court by contending that the petitioners did not put in appearance before the learned trial Court



intentionally and deliberately and, therefore, having left with no other option, the proclamation was issued to secure their presence.

7. I have heard learned counsel for the parties and perused the record of the case with their able assistance and with the consent of parties, the matter is taken up for final disposal.

8. While the scheme of criminal justice system necessitates 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.

9. A perusal of the impugned order reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioners have absconded or are concealing themselves. 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 (CrI.) 319***, it has been held that the conditions specified in Section 82 (2) Cr.P.C. for the publication of a proclamation against an

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absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity.

10. 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 petitioners in the present case has themselves come forward and have undertaken to appear before the learned trial Court on each and every date of hearing.

11. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 09.08.2018 (Annexure P-5), vide which the petitioners were declared proclaimed persons as well as all the consequential proceedings emanating therefrom, are hereby set-aside.

12. The petitioners are directed to appear before the learned trial Court at Sultanpur Lodhi within a period of 04 weeks from today and on doing so, they shall be admitted to bail on furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, along with costs of Rs.30,000/- (Rs.10,000/- each) to be deposited with All India Pingalwara Charitable Society, Jalandhar Branch, for wasting precious time of the Court.

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

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14. However, in case, the petitioners fail 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.

15. The Investigating Officer would be at liberty to issue notice to the petitioners under Section 41-A of Cr.P.C., in case they are required for the purpose of investigation.

(HARPREET SINGH BRAR)
JUDGE

11.02.2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No