

2025:PHHC:043188



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

CRM M-6847 of 2025

Date of Decision: 01.04.2025

Harwinder Singh Atwal		...Petitioner
	Versus	
State of Punjab and another		... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Harkirat Singh Bhogal, Advocate, for the petitioner.
Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 of the Cr.P.C. with a prayer to quash the impugned order dated 21.04.2017 (Annexure P-6) passed by the Court of Sh. R.S. Rana, Judicial Magistrate 1st Class, Nakodar in a criminal complaint bearing No. COMI 02/2014 titled as **“Atma Singh Vs. Harwinder Singh Atwal”** under Sections 406/420 of IPC, whereby, the petitioner was declared as a proclaimed person.

2. Learned counsel for the petitioner contends that complainant Atma Singh filed a criminal complaint bearing No. COMI 02/2014 titled as **“Atma Singh Vs. Harwinder Singh Atwal”** under Sections 406/420 of IPC in the Court of Judicial Magistrate 1st Class, Nakodar against the present petitioner on

29.01.2014. After the preliminary evidence, the petitioner was summoned under Section 420 IPC on 15.12.2014 vide summoning order (Annexure P-2). Thereafter, the petitioner appeared before the trial Court and was granted the concession of bail. He further contends that in fact the parties had entered into a compromise and the complainant assured the petitioner that the complaint would be withdrawn. However, he did not withdraw the complaint and it remained pending before the trial Court. On 15.01.2016, the petitioner went to U.S.A. and remained there till 31.05.2023. Learned counsel further contends that even though the complainant was aware that the petitioner was abroad, still he did not inform the Court. In the meantime, the summons/warrants were issued for the service of the petitioner, but the same were not served on the petitioner as he was abroad. He further contends that vide order dated 31.01.2017, the proclamation was issued against the present petitioner for 28.02.2017. The proclamation was published against the petitioner on 25.02.2017 and the statement of the serving official/constable Raspreet Singh was recorded by the trial Court. As per the said statement, he had affixed the copy of the proclamation on the door of the house of the petitioner, whereas second copy of the proclamation was affixed at the common place of the village and third copy was affixed at the notice board of the Court. However, the proclamation was not read publicly in some conspicuous place of the village, where the petitioner was ordinarily residing. Thus, the provisions of Section 82 Cr.P.C. was

not complied by the serving official. Still further, the case was listed on 28.02.2017 and 27.03.2017, however, the period of 30 days had not elapsed and the case was adjourned to 21.04.2017 for awaiting the appearance of the petitioner. Learned counsel further contends that such adjournment could never be construed as sufficient compliance of the provisions of Section 82 Cr.P.C.

3. On the other hand, learned State counsel had vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner had intentionally not appeared before the trial Court for several months and is not entitled for any relief. It was submitted that the petitioner had the knowledge of pendency of the proceedings against him, however, he chose not to appear before the trial Court and the petition is liable to be dismissed. However, learned State counsel could not rebut the factual submissions made by learned counsel for the petitioner in the present case.

4. It has been held by this Court in the matter of **Ashok Kumar Vs. State of Haryana and Anr.2013(4) RCR (Criminal) 550** as under:

3. "As per order dated 04.01.2013 passed by the learned Additional Chief Judicial Magistrate, Panipat the case has been adjourned for 06.03.2013 for issuing of proclamation under Sections 82 and 83 Cr.P.C. against petitioner Ashok Kumar. The order dated 06.03.2013, shows that proclamation issued against Ashok Kumar received back duly executed. Statement of Serving

Constable was also recorded. Period of 30 days had not elapsed from the date of publication. Therefore, the case was adjourned to 13.3.2013. On that day, the petitioner was declared as proclaimed offender. The original record also shows that the statement of the serving official, namely, ASI Dilbag Singh was recorded on 6.3.2013, who stated that on 9.2.2013, he visited the place of residence of the accused along with proclamation. After reading publicly, the proclamation was affixed at conspicuous part of the house of the accused where he ordinarily resides. A copy of the proclamation was also affixed at conspicuous part of the Court house, which means that the publication was effected on 9.2.2013 for 6.3.2013, which shows that after the publication of the notice, the accused was not given the mandatory period of 30 days to appear before the Court. The mere fact that the Court adjourned it after the period of 30 days will not be treated as compliance of the provisions of Section 82 (1) Cr.P.C. where it is provided that :-

“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.

(1) xx xx xx xx xx xx xx

(2) xx xx xx xx xx xx xx

4. *“In view of the above provisions of Section 82(1) Cr.P.C., it is clear that the publication was effected on 9.2.2013 and the accused was directed to appear in the Court as per that publication on 6.3.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned order on 13.3.2013, the publication has been effected as per the provisions of Section 82 Cr.P.C. There was no order in the publication for the accused giving specified time and place to appear on 13.3.2013. Therefore, this order is not as per law and the same is set aside”.*

5. Still further, it has been held by this Court in the matter of ***Avtar Singh Vs. State of Punjab and Anr. in CRM-M-1866-2017*** which is as under:-

“The above quoted provision is clear that through the proclamation made prior to declaration of a person as a proclaimed offender, he should be given not less than thirty days from the date of its proclamation to appear at a specified place and a specified time.

In the case in hand, thirty days were not given to the petitioner to appear before the Trial Court as the proclamation was made on 13.05.2011 requiring him to appear before the Trial Court on 14.05.2011. Thus, the proclamation and the subsequent order dated 03.09.2011 (Annexure P-2) declaring the petitioner to be a proclaimed offender do not confirm with the mandate of Section 82 (1) of the Code”.

6. In the present case also, this Court has no hesitation to hold that the mandatory provisions of Section 82 Cr.P.C. had not been complied by the trial Court. Even, the proclamation was not read by the serving constable at some conspicuous place of the village where the petitioner is ordinarily residing. Moreover, the trial Court has adjourned the case for completion of statutory notice period of 30 days and period granted to the petitioner for appearance before the trial Court was less than 30 days. Thus, in view of the mandatory provisions of Section 82 Cr.P.C. and the ratio laid down by this Court in the matter of ***Ashok Kumar and Avtar Singh (supra)***, it can be safely concluded that the trial Court had not complied with the provisions of Section 82 Cr.P.C., while declaring the petitioner as proclaimed person and there was no sufficient compliance of the provisions of Section 82(1) Cr.P.C. The impugned order dated 21.04.2017 (Annexure P-6) passed by the Court of Judicial Magistrate 1st Class, Nakodar is legally unsustainable and liable to be quashed by this Court.

7. As an upshot of the above discussion, the impugned order dated 21.04.2017 (Annexure P-6) passed by the Court of Judicial Magistrate 1st Class, Nakodar and all subsequent proceedings arising therefrom are ordered to be quashed qua the petitioner.

8. Consequently, the petitioner is permitted to surrender before the learned trial Court/Area Magistrate/Duty Magistrate within

a period of eight weeks from today and on his surrender, he shall be admitted to bail by the concerned Court on his furnishing bail bonds/surety bonds to the satisfaction of the concerned Court. The Court, which admits the petitioner to bail, shall also be at liberty to impose such reasonable conditions, as provided by law. In case, the petitioner does not surrender within a period of eight weeks from today, the present petition shall be deemed to be dismissed by this Court.

9. The petition is disposed off in above terms.

01.04.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

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