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

137

CRM-M-10204-2025 (O&M)

Date of decision: 12.03.2025

Atma Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. H. S. Dhindsa, Advocate
for the applicant-petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

Mr. Rahul Balana, Advocate
for respondent No.2/complainant.

MANISHA BATRA, J. (Oral)

1. CRM-10298-2025

Allowed as prayed for.

Amended memo of parties is taken on record. Office to tag the
same at appropriate place in the file.

2. CRM-10299-2025

Allowed as prayed for.

Documents are taken on record.

3. CRM-10300-2025

Prayer in this application is for preponing the main case, which is
fixed for 25.03.2025.

For the reasons stated in the application, the same is allowed. The
main case is preponed and taken up today itself.

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4. CRM-M-10204-2025 (O&M)

The instant petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for quashing of order dated 18.04.2019 (Annexure P-2), passed by the Court of learned Judicial Magistrate First Class, Rajpura in case titled as ***Gurcharan Singh vs. Atma Singh***, arising out of complaint bearing No. COMA-227-2017, filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), whereby the petitioner had been declared a proclaimed person.

5. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the petitioner has been falsely implicated in the aforementioned complaint. The petitioner was never served with any notice/warrants issued by the learned trial Court. He had been declared a proclaimed person without following the proper procedure prescribed under Section 82 of Cr.P.C. Even otherwise, the matter stands amicably settled between the petitioner and respondent No. 2/complainant and in pursuance of the same, vide order dated 31.01.2025, the complaint in question stands dismissed as withdrawn. Hence, it is urged that the impugned order is liable to be set aside.

6. Since the present petition has been filed against an order which has been passed in a complaint filed by respondent No. 2 under Section 138 of the N. I. Act, learned State counsel has chosen not to raise any argument.

7. On the other hand, learned counsel for respondent No. 2/complainant has admitted the factum of compromise having arrived at between the parties and also that the complaint in question stands dismissed as

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withdrawn on 31.01.2025. He has also submitted that he has no objection if the present petition is allowed and the impugned order is quashed in favour of the petitioner.

8. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

9. On giving due deliberations to the contentions as raised by learned counsel for the parties and on an overall perusal of the orders passed by the learned trial Court from the date of initiating proceedings under Section 82 of Cr.P.C. as against the petitioner till the date of declaring him a proclaimed person, I am of the considered opinion that the impugned order dated 18.04.2019 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

10. After going through the material placed on record as well as the copies of zimni orders passed by the learned trial Court, it is revealed that on 19.01.2019, since the non-bailable warrants issued against the petitioner were received back unserved, the learned trial Court had ordered for issuance of proclamation against him for 18.04.2019. A bare perusal of this order shows that the learned trial Court before ordering for publication of proclamation has not recorded its proper satisfaction that the petitioner had absconded or was concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence, which was in violation of the provisions of Section 82(1) of Cr.P.C. Reliance in this regard can be placed upon ***Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561.***

11. Further, a perusal of the statement of the serving police official HC Rashpal reveals that the proclamation was not read over in some

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conspicuous place of the town or village in which the petitioner was supposed to be residing. As per Section 82 (2) of Cr.P.C. for publication, the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house. The three sub-clauses (a)-(c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. Reliance in this regard can be placed upon ***Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368.***

12. Accordingly, in view of the discussion as made above and also in view of the ratio of law as laid down in above cited authorities, the present petition is allowed and the impugned order dated 18.04.2019 (Annexure P-2), passed by the Court of learned Judicial Magistrate First Class, Rajpura in case titled as ***Gurcharan Singh vs. Atma Singh***, arising out of complaint bearing No. COMA-227-2017, filed under Section 138 of the N. I. Act, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom. Since the main complaint already stands dismissed as withdrawn, no further action is called for in the matter.

12.03.2025
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No