



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

**CRM-M-10187-2025
Date of decision: 21.02.2025**

MOHIT KUMAR GAMBHIR

...PETITIONER

V/S

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Shantanu Bansal, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 12.09.2024 (Annexure P-7), whereby, non-bailable warrants were issued against the petitioner and proclamation order dated 09.01.2025 (Annexure P-10) passed by learned Judicial Magistrate 1st Class, Ferozepur in a complaint filed under Section 138 of Negotiable Instruments Act.

2. Brief facts of the case as alleged are that the petitioner was allotted 44007 Qtls. of paddy by the complainant for milling and for delivery of rice in central pool, FCI. An agreement dated 01.10.2018 was executed by petitioner and DFSC Ambala on behalf of State of Haryana. The petitioner/accused failed to perform its contractual obligation and did not supply 15725.13 Qtls. of rice, out of 29484.7 Qtls. of rice. As such, the accused/petitioner has committed the breach of agreement and is under obligation to pay Rs.5 crores to the complainant/department against the remaining quantity of rice. The accused/petitioner, in order to discharge his



liability handed over four cheques bearing Nos.013169, 013170, 013171 and 013172 amounting to Rs.2 crores respectively and asked the complainant to present the cheques on 21.01.2020 with an understanding that on presentation, the same would be encashed. However, upon presentation, the said cheques were returned back vide memos with the remarks to present the cheques again after contacting with drawer/drawee bank. The cheques were again presented, but were again returned with the same remarks vide memos dated 28.01.2020. Thereafter, a legal notice dated 03.02.2020 was sent to accused/petitioner through registered post, but the same were returned being undelivered. Hence the complaint.

3. Learned counsel for the petitioner *inter alia* contends that the complaint came up for hearing before the learned trial Court on 12.03.2020. Thereafter, on account of Covid-19 pandemic, the case was kept on adjourning till 24.04.2023. Thereafter, non-bailable warrants and subsequently, proclamation against the petitioner were issued without following the drill of Section 82 Cr.P.C. and non-compliance of the mandatory provisions vitiates the entire proceedings, which suffers from incurable illegality as he was never served and the impugned orders are liable to be set aside.

4. Notice of motion.

5. Mr. Vikas Bhardwaj, AAG, Haryana, who is present in the Court, accepts notice on behalf of respondent No.1-State and supports the orders passed by the learned trial Court by contending that the petitioner did not put in appearance before the trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure his presence.



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

7. 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.

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

9. 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.



10. In view of the aforesaid facts and circumstances and in view of the ratio of law laid down in *Major Singh @ Major (supra)*, the present petition is allowed and the order dated 12.09.2024 (Annexure P-7), whereby, non-bailable warrants were issued against the petitioner and proclamation order dated 09.01.2025 (Annexure P-10), vide which, the petitioner was declared proclaimed person are quashed.

11. The petitioner is directed to appear before the trial Court within a period of two 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 Poor Patients Welfare Funds, PGIMER, Chandigarh for wasting precious time of the Court.

12. Receipt of payment of cost must be presented before learned trial Court and learned trial Court is directed to verify the same.

13. It is made clear that in case, the petitioner fails to appear before the trial Court within a stipulated period, the interim protection granted by this Court shall be deemed to be vacated.

February 21, 2025
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |