



CRM-M-18022-2025

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

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Date of decision: 28.10.2025

Surjit Kumar

...Petitioner

V/s

M/s Mahindra and Mahindra Financial Services Ltd.
and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Naveen Kumar, Advocate for
Mr. HPS Ishar, Advocate for the petitioner.
Mr. Himendra Pal, Advocate for the respondent No.1.
None for the respondent No.2.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 528 of BNSS, 2023, seeking quashing of order dated 06.09.2024 (Annexure P-7) passed by the Judicial Magistrate Ist Class, Chandigarh whereby the petitioner was declared proclaimed person in criminal complaint No.7100 of 2023 under Section 138 of the Negotiable Instruments Act, 1881 alongwith all consequential proceedings.

2. Learned counsel for the petitioner has iterated that the impugned order declaring the petitioner as a proclaimed person is illegal and unsustainable in law as the mandatory procedure prescribed under Section 82 of Cr.P.C. has not been adhered to. It has been further iterated that the ordinary summons issued vide order dated 21.12.2023 were never served yet the Court below erroneously issued bailable warrants for 28.05.2024.

According to learned counsel, the said warrants were received unserved but



despite specifically recording that the service was not proper, the Court below issued non-bailable warrants for 29.05.2024. Thereafter, when even the non-bailable warrants were received unserved, the Court below vide order dated 18.07.2024 issued proclamation for 12.08.2024 which is apparently less than the mandatory period of 30 days as required under Section 82 of Cr.P.C. Learned counsel has further submitted that instead of issuing a fresh proclamation in compliance with the statutory mandate, the Court below merely adjourned the case to 06.09.2024 to complete the period of 30 days and thereafter declared the petitioner as a proclaimed person. According to learned counsel, such a course of action is contrary to the settled position of law as laid down by the Hon'ble Supreme Court in case titled as *Ashok Kumar vs. State of Haryana and another, 2013(4) RCR (Criminal) 550*, wherein it has been categorically held that the proclamation must itself provide a clear notice period of not less than 30 days from the date of its publication and the defect cannot be cured by mere adjournment. It has been further argued that before issuing a proclamation, the Court must have a reason to believe that the accused has absconded or is concealing himself so that the warrants cannot be executed, which condition is not satisfied in the present case. Learned counsel has prayed that the proclamation dated 18.07.2024 and the consequential impugned order dated 06.09.2024 declaring the petitioner as a proclaimed person are procedurally defective, contrary to Section 82 of Cr.P.C. and therefore, liable to be quashed alongwith all consequential proceedings arising therefrom.

3. Learned counsel appearing for the respondent No.1 has iterated that the present petition is misconceived and devoid of merits. Learned



counsel has further iterated that the impugned order declaring the petitioner as proclaimed person has been rightly passed by the Court below after following due process of law under Section 82 of Cr.P.C. According to learned counsel, despite repeated opportunities, the petitioner willfully avoided appearance before the Court below. Furthermore, ordinary summons and subsequent process, includingailable and non-ailable warrants, were issued on multiple occasions yet the petitioner failed to appear and did not cooperate with the proceedings. Learned counsel has further submitted that the proclamation issued on 18.07.2024 was duly published and affixed in accordance with the provisions of Section 82 of Cr.P.C. and ample time was granted to the petitioner to appear before the Court. It has further been pointed out that the learned Court below scrupulously adhered to the procedure prescribed under Section 82 of the Code of Criminal Procedure, 1973, and no infirmity or irregularity is discernible from the record. Learned counsel has, therefore, contended that the conduct of the petitioner clearly establishes his deliberate defiance of the judicial process. Accordingly, dismissal of the instant petition has been prayed for.

3.1. None has caused appearance on behalf of respondent No.2.

4. I have heard the learned counsel for the rival parties and carefully perused the record of the case.

5. The law is well settled that no person can be declared a proclaimed offender/person unless the procedure prescribed under Section 82 of the Code of Criminal Procedure, 1973 is meticulously adhered to. It is trite law that the provisions of Section 82 are mandatory in nature, and any



non-compliance thereof vitiates the entire proceedings. Furthermore, Section 82(1) of the Cr.P.C. clearly provides that before issuing a proclamation requiring a person to appear, the Court must have reason to believe that such person has absconded or is concealing himself so that the warrant cannot be executed. Further, the proclamation must specify a date not less than 30 days from the date of publication for the accused to appear before the Court. In the present case, the record reflects that the summon and warrants were returned unserved and there is no finding that the petitioner was evading service. A perusal of the report dated 18.07.2024 shows that the proclamation was issued for 12.08.2024 as the date of appearance which is less than 30 days from the date of its issuance. Such defect was not cured by the Court below by issuing a fresh proclamation as required by law but instead it merely adjourned the matter to 06.09.2024 for the sake of formality. In the considered opinion of this Court, clear notice period of not less than 30 days from the date of its publication must be provided in the proclamation itself and subsequent adjournments cannot rectify the defect. The same legal principle squarely applies in the present case. However, the trial Court vide impugned order dated 06.09.2024 declared the petitioner as proclaimed person which is not shown to have been executed in conformity with Section 82 of the Cr.P.C.

6. This Court finds the course adopted by the Court below is antithesis to the provisions of Section 82 of the Code of Criminal Procedure, 1973. The Court below has committed illegality by issuing the said proclamation under Section 82 of the Criminal Procedure Code, 1973, without complying the mandatory requirements of law. The learned Court



below, while declaring the petitioner as proclaimed person, failed to satisfy itself regarding due execution of proclamation and proceeded in a mechanical manner. Such an order being violative of mandatory provisions of law, cannot be sustained. Section 82 of the Criminal Procedure Code, 1973 reads as under:

“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.

(2) The proclamation shall be published as follows: -

(i)(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this Section have been complied with, and that the proclamation was published on such day.

[(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459, or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.



(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).J”

7. A Coordinate Bench of this Court while dealing with invocation of the provision of Section 82 of the Code of Criminal Procedure, against an accused in the case of ‘**Sonu v. State of Haryana, 2021(1) RCR (Criminal) 319**’, held as under:

“9. The essential requirements of section 82 of the Cr.P.C., 1973 for issuance and publication of proclamation against an absconder and declaring him as proclaimed person/offender may be summarized as under:-

(i) Prior issuance of warrant of arrest by the Court is sine qua non for issuance and publication of the proclamation and the Court has to first issue warrant of arrest against the person concerned. (See Rohit Kumar v. State of Delhi: 2008 CrI. J. 2561).

(ii) There must be a report before the Court that the person against whom warrant was issued had absconded or had been concealing himself so that the warrant of arrest could not be executed against him. However, the Court is not bound to take evidence in this regard before issuing a Proclamation under section 82(1) of the Cr.P.C., 1973. (See Rohit Kumar v. State of Delhi : 2008 CrI. J. 2561).

(iii) The Court cannot issue the Proclamation as a matter of course because the Police is asking for it. The Court must be prima facie satisfied that the person has absconded or is concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence. (See Bishundayal Mahton and others v. Emperor : AIR 1943 Patna 366 and Devender Singh Negi v. State of U.P. : 1994 CrI LJ (Allahabad HC) 1783).

(iv) The requisite date and place for appearance must be specified in the proclamation requiring such person to appear on such date at the specified place. Such date must not be less than 30 clear days from the date of issuance and publication of the proclamation. (See Gurappa Gugal and others v. State of Mysore : 1969 CrI LJ 826 and Shokat Ali v. State of Haryana : 2020(2) RCR (CRIMINAL) 339).

(v) Where the period between issuance and publication of the proclamation and the specified date of hearing is less than thirty days, the



accused cannot be declared a proclaimed person/offender and the proclamation has to be issued and published again. (See Dilbagh Singh v. State of Punjab (P&H) : 2015 (8) RCR (CRIMINAL) 166 and Ashok Kumar v. State of Haryana and another : 2013 (4) RCR (CRIMINAL) 550)

(vi) The Proclamation has to be published in the manner laid down in section 82(2) of the Cr.P.C., 1973. 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., 1973 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. (See Pawan Kumar Gupta v. The State of W.B. : 1973 CriLJ 1368). Where the Court so orders a copy of the proclamation has to be additionally published in a daily newspaper circulating in the place in which the accused ordinarily resides. Advisably, proclamation has to be issued with four copies so that one each of the three copies of the proclamation may be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides, to some conspicuous place of such town or village and to some conspicuous part of the Courthouse and report regarding publication may be made on the fourth copy of the proclamation. Additional copy will be required where the proclamation is also required to be published in the newspaper.

(vii) Statement of the serving officer has to be recorded by the Court as to the date and mode of publication of the proclamation. (See Birad Dan v. State: 1958 CriLJ 965).

(viii) The Court issuing the proclamation has to make a statement in writing in its order that the proclamation was duly published on a specified day in a manner specified in section 82(2)(i) of the Cr.P.C., 1973. Such statement in writing by the Court is declared to be conclusive evidence that the requirements of Section 82 have been complied with and that the proclamation was published on such day. (See Birad Dan v. State: 1958 CriLJ 965).

(xi) The conditions specified in section 82(2) of the Cr.P.C., 1973 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. (See Devendra Singh Negi alias Debu v. State of U.P. and another: 1994 CriLJ 1783 and Pal Singh v. The State: 1955 CriLJ 318)."

8. It is pertinent to mention that it is by now a settled principle of law that before issuing a proclamation under Section 82 Cr.P.C., the Court must record its satisfaction that the accused, against whom the proclamation is sought to be issued, is absconding or concealing himself with intent to evade arrest. This foundational requirement is conspicuously absent in the present case. A perusal of the impugned order dated 06.09.2024 reflects that no such satisfaction was recorded by the Court below, nor was there any material to justify the inference that the petitioner had absconded or was deliberately avoiding arrest. Furthermore, the issuance of non-bailable warrants and proclamation without establishing proper service of earlier process(s) shows non-compliance with the due process of law, resulting in serious prejudice to the petitioner.

9. The provisions of Section 82 of the Code of Criminal Procedure having serious ramifications qua the right of the accused concerning his presence in the criminal trial proceedings ought not be and cannot be invoked in casual and cavalier manner. The requirement of recording of satisfaction, that the accused has absconded or is concealing himself so that warrant of his arrest cannot be executed, as embodied in Section 82 of the Code of Criminal Procedure, is to be scrupulously complied with based on relevant material available on record of the case in that regard. Non-adherence to said requirement while declaring the accused as proclaimed person vitiates the proclamation proceedings initiated against

the accused.



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10. Hence, no useful purpose would be served by keeping the criminal proceedings pending against the petitioner, particularly when the petitioner has already joined the investigation and duly cooperated. It is, therefore, an appropriate case for the exercise of powers under Section 528 of BNSS/Section 482 of Cr.P.C. and to bring to an end the criminal proceedings initiated in the light of the FIR *ibid* against the petitioner.

11. In view of the above findings, in the entirety of facts and circumstances of the present case, the present petition is allowed and the impugned order dated order dated 06.09.2024 (Annexure P-7) passed by the Judicial Magistrate Ist Class, Chandigarh whereby the petitioner was declared proclaimed person in criminal complaint No.7100 of 2023 under Section 138 of the Negotiable Instruments Act, 1881 as well as the other consequential proceedings arising therefrom are quashed.

12. Pending application(s), if any, shall also stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

October 28, 2025

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No