



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

CRM-M-32366-2022 (O&M)

Reserved on : 15.02.2025

Pronounced on : 20.03.2025

Pawan Gupta

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Vibhor Singh, Advocate
for the petitioner. (Through VC)

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Sunish Bindlish, Advocate
for respondents No. 2 and 3. (Through VC)

Mr. Rajesh Sethi, Senior Standing Counsel with
Ms. Kanika Sachdeva, Advocate,
Ms. Preeti Bansal, Advocate and
Mr. Anshuman Sethi, Advocate
for respondent No. 4.

MANISHA BATRA, J.

1. The instant petition has been filed by the petitioner under Section 482 of the Criminal Procedure Code (*for short 'the Code'*) for quashing of order dated 15.10.2016 (Annexure P-1), passed by the Court of learned Judicial Magistrate First Class, Sonapat in case titled as ***DRI vs. Pawan***, arising out case bearing ***CRM-30-2019***, dated 17.08.2019, whereby the petitioner had been declared a proclaimed person.

2. As per the allegations, on the basis of a secret information received by the Custom Department about a huge quantity of red sanders wood being transported to Sharjah, UAE in a container, the said container was checked on 24.10.2014 and red sanders wood weighing 54 metric tons having

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value of approximately Rs. 23 crores was seized. It was kept hidden in some bath tubs. On 25.10.2024, search operation was conducted at a godown at Bakhtawarpur, New Delhi and incriminating documents, laptops etc. were taken into possession from one Anil Kumar Singh. Some other persons were also apprehended and recovery of some red sanders wood was also effected from the godown. One of the apprehended persons namely Thindu Sherpa recorded a statement that the said godown was taken on rent by the present petitioner. It emerged that in fact the petitioner was the mastermind, who had constituted a syndicate for dealing with prohibited red sanders wood. He was not found available at his known addresses at Delhi and Kundali, Sonipat. Summons were issued to him. The petitioner, however, managed to flee to Nepal. On 27.04.2015, a detention order under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (*for short* '**COFEPOSA**') was issued against the petitioner for his preventive detention. He did not surrender. An application under Section 7(1)(a) of COFEPOSA was filed before the concerned Magistrate at Sonipat for initiating proclamation proceedings against the petitioner for securing his presence.

3. Vide order dated 30.08.2016, passed by the Judicial Magistrate First Class, Sonipat, proclamation was ordered to be issued against the petitioner for 15.10.2016. The proclamation was directed to be issued by way of publication in Newspaper also. On 15.10.2016, the executing police official appeared before the concerned Court and recorded his statement regarding publication of proclamation on 01.10.2016. By observing that the



proclamation had been duly executed, the learned Magistrate declared the petitioner a proclaimed person on the same day.

4. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the impugned order dated 15.10.2016 is not sustainable in the eyes of law as while declaring the petitioner as a proclaimed person, the learned Magistrate ignored the fact that the due procedure as prescribed under Section 82 of the Code and as established under law for declaring a person as proclaimed one had not been followed. The learned Magistrate committed a grave error in observing that the mandatory period of 30 days had elapsed since the date of execution of proclamation, though in fact it had not expired. The fact that the Director of Revenue Intelligence had moved a similar application simultaneously before a Court at Delhi and two simultaneous applications under Section 82 of the Code on the same allegations could not be moved was also not taken into consideration by the learned Magistrate. With these broad submissions, it is urged that the present petition deserves to be allowed and the impugned order is liable to be set aside.

5. A joint reply has been filed on behalf of respondents No. 2 and 3, whereas a separate reply has been filed on behalf of respondent No. 4. It is argued by learned Assistant Advocate General, Haryana and learned counsel for respondents No. 2 and 3 that there is no infirmity and illegality in the impugned order and, therefore, the petition is liable to be dismissed.

6. However, learned counsel for respondent No. 4 has argued that the petitioner was issued notices to appear before the Directorate of Revenue Intelligence but he failed to do so. A complaint had also been filed against



him in the Court of Chief Metropolitan Magistrate, Patiala House at Delhi. The petitioner had managed to flee to Nepal when he came to know about seizure of red sanders wood. A detention order under the provisions of COFEPOSA was passed against him. The same could not be served upon him at his Nepal address since Nepal is a sovereign country. Hence, the applications for initiating proclamation proceedings were filed before the jurisdictional Courts, wherein the petitioner had been ordinarily residing in India. The learned Magistrate has followed the proper procedure while declaring him a proclaimed person and there is no illegality or infirmity in the impugned order. A writ petition filed by the petitioner under Article 226 of the Constitution of India before the Delhi High Court challenging his detention order has been dismissed, vide order dated 16.10.2024. Hence, it is urged that the present petition is liable to be dismissed.

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

8. 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 Magistrate from the date of initiating proceedings under Section 82 of the Code as against the petitioner till the date of declaring him a proclaimed person, I am of the considered opinion that the impugned order dated 15.10.2016 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

9. At the outset, it would be relevant to refer to the provision of Section 82 of the Code, which provides for publication of proclamation against the person absconding. It 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 section 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 subsection (1).”

10. There are catena of judgments of different High Courts discussing the requirements necessary for issuance and publication of proclamation against an absconder under Section 82 Cr.P.C. and for declaring him as a proclaimed person/offender. These requirements have been discussed from time to time in ***Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561, Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366, Devender Singh Negi Vs. State of U.P. : 1994 CrL LJ (Allahabad HC) 1783, Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826, Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339, Dilbagh Singh Vs. State of Punjab : (P&H) 2015 (8) R.C.R. (criminal) 166, Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550, Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368, Birad Dan Vs. State : 1958 CriLJ 965, Negi alias Debu Vs. State of U.P. and another, 1994 Cri LJ 1783 and Pal Singh Vs. The State : 1955 CriLJ 318.***

11. The position of law as laid down in the above cited authorities 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.
- (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.

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(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.

(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.

(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.

(vi) The Proclamation has to be published in the manner laid down in Section 82 (2) of the 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. 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

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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.

(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.. 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.

(xi) The conditions specified in Section 82(2) of the 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.

12. On applying the above discussed position of law to the peculiar facts and circumstances of the present case and on a perusal of the material placed on record, it is revealed that the Ministry of Commerce and Industry, Govt. of India had passed a detention order against the present petitioner under the provisions of COFEPOSA on 06.05.2015. As per Section 3 (1) of this Act, Central Government or the State Government or any officer of the Central Government, specially empowered, may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from smuggling goods or abetting the smuggling of goods or engaging in transporting or concealing or keeping smuggled goods or dealing in smuggled goods otherwise than by



engaging in transporting or concealing or keeping smuggled goods or harbouring persons, engaged in smuggling goods or in abetting the smuggling of goods, make an order directing such person to be detained. Then as per Section 7 of this Act, if the appropriate Government has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, the Government may make a report in writing of the fact to a Metropolitan Magistrate or a jurisdictional Magistrate in the place where the said person ordinarily resides and thereupon the provisions of Section 82 of the Code shall apply in respect of such person and his property.

13. In exercise of its powers under the aforementioned provisions and being satisfied that the petitioner had absconded after passing of detention order, the respondents-authorities moved application (Annexure P-8) before the jurisdictional Magistrate at Sonipat on 07.11.2015. The said Magistrate, vide order dated 24.08.2016 (Annexure P-11), issued proclamation under Section 82 of the Code against the petitioner. Now the question that requires consideration by this Court is as to whether the proper procedure as prescribed under Section 82 of the Code had been followed by the jurisdictional Magistrate or not?

14. On a perusal of the record, it has been revealed that on 24.08.2016, learned Magistrate had passed order for issuance of proclamation against the petitioner for 15.10.2016. A copy of order dated 15.10.2016 has been placed on record as Annexure P-1. This order reads as under :

“Proclamation issued upon accused Pawan received back duly executed. Today mandatory period of 30 days as per Section 82 Cr.P.C. have been elapsed since execution of

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the proclamation. Statement of serving official recorded. None has appeared on behalf of accused Pawan since morning. Case called several times. It is already 3:30 PM. Hence, accused Pawan is hereby declared as proclaimed person. Now, for proceedings u/s 83 Cr.P.C. to come upon 19.11.2016.”

15. A perusal of Annexure P-2 reveals that the executing police official ASI Jaswant Singh had also appeared before the concerned Court on 15.10.2016 and had recorded his statement that on 30.09.2016/01.10.2016, he had visited the given address of the petitioner, had pasted a copy of the proclamation on the premises of the given address, one photocopy was pasted on the main gate of the TDI City and one was pasted on the notice board of the Court. On a perusal of the statement of the executing police official as well as the order dated 15.10.2016, it is apparent that the proclamation issued for 15.10.2016 had in fact been published/executed only on 30.09.2016/01.10.2016. Meaning thereby that as on 15.10.2016, the specified period of 30 days had not expired. Hence, the same was in clear violation of the provisions of Section 82(1) of the Code, as per which, a specified time of not less than 30 days is required to be given to the accused from the date of publishing such proclamation which is mandatory in nature. Reliance in this regard can be placed upon ***Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826*** and ***Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339.***

15. 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 15.10.2016 (Annexure P-1),

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passed by the Court of learned Judicial Magistrate First Class, Sonapat in case titled as ***DRI vs. Pawan***, arising out case bearing ***CRM-30-2019***, dated 17.08.2019, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom. The respondents will be at liberty to proceed further in the matter in accordance with law.

20.03.2025
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>