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

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CRM-M-27853-2025 (O&M)
Date of decision: 20.05.2025

Shamsher Singh @ Sher Singh**...Petitioner**

Versus

State of Punjab**...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Harpreet Singh, Advocate
for the petitioner.

Ms. Himani Arora, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. 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 04.12.2012 (Annexure P-7), passed by the Court of learned Sub Divisional Judicial Magistrate, Jagraon in case titled as ***State vs. Devinder Singh etc.***, arising out of FIR No. 171 dated 27.08.2011, registered under Sections 397, 395, 452, 332, 333, 186, 148 and 149 of IPC at Police Station Sadar Jagraon, District Ludhiana, whereby the petitioner had been declared a proclaimed offender.

2. 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 this case. The petitioner had no knowledge about the pendency of the case against him as he was never served with any notice/warrants issued by the learned trial Court. More so, the petitioner had been declared a proclaimed offender without following the proper procedure

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prescribed under Section 82 Cr.P.C. Hence, it is urged that the impugned order is liable to be set aside.

3. *Per contra*, learned State counsel, who has advance notice of the petition and is ready to argue the matter, has argued that the petitioner was having due knowledge about the pendency of the trial and had intentionally avoided his appearance before the learned trial Court. Therefore, he was rightly declared a proclaimed offender. Hence, it is urged that the petition is liable to be dismissed.

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

5. 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 Cr.P.C. as against the petitioner till the date of declaring him a proclaimed offender, I am of the considered opinion that the impugned order dated 04.12.2012 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

6. 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***,

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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.

7. After going through the material placed on record as well as the copies of zimini orders passed by the learned trial Court, it is revealed that on 01.03.2012, 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 02.04.2012. The proclamation was received back duly effected on 02.04.2012 and the statement of the serving police official was recorded on that very day but instead of declaring the petitioner a proclaimed offender, the case was adjourned to 01.05.2012. Thereafter, the case was adjourned on multiple dates for different reasons but the proclamation proceedings initiated against the petitioner did not culminate. Eventually, on 04.12.2012, i.e. after a period of about 08 months from execution of proclamation, the petitioner was declared a proclaimed offender, without issuing any fresh proclamation. Hence, the procedure adopted by the learned trial Court was not in consonance with the provisions of Section 82 of Cr.P.C.

8. Further, a perusal of the statement of the serving police official reveals that the proclamation was not read over in some conspicuous place of

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the town or village in which the petitioner was supposed to be residing. As per 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. Reliance in this regard can be placed upon ***Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368.***

9. 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 04.12.2012 (Annexure P-7), passed by the Court of learned Sub Divisional Judicial Magistrate, Jagraon in case titled as ***State vs. Devinder Singh etc.***, arising out of FIR No. 171 dated 27.08.2011, under Sections 397, 395, 452, 332, 333, 186, 148 and 149 of IPC at Police Station Sadar Jagraon, District Ludhiana, whereby the petitioner had been declared a proclaimed offender, is quashed with all consequential proceedings arising therefrom.

10. However, the petitioner is directed to surrender before the Court concerned within a period of three weeks, subject to order for grant of anticipatory bail, if any passed on his petition to be filed under Section 482 of

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BNSS. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioner shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court in accordance with law.

11. Needless to observe that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall be bound to dispose of the same expeditiously and that nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

12. Till the appearance of the petitioner before the learned trial Court, his arrest shall remain stayed.

13. It is made clear that in case the petitioner fails to appear before the learned trial Court within a period of four weeks from today, this petition shall be deemed to be dismissed.

20.05.2025
Waseem Ansari

(MANISHA BATRA)
JUDGE

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