

CRM-M-34331-2023

2025:PHHC:175889



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**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

CRM-M-34331-2023

Dilmick Lamba

....Petitioner

versus

State of Punjab

....Respondent

Date of decision: December 19, 2025

Date of Uploading: December 19, 2025

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Rahul Bhargava, Advocate and
Ms. Tamanna Singla, Advocate for the petitioner.

Mr. Adhiraj Singh Thind, AAG Punjab.

SUMEET GOEL, J. (ORAL)

Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C.'), seeking setting aside/ quashing of the impugned order dated 18.11.2016 (Annexure P-2) passed by the Chief Judicial Magistrate, Mohali, whereby, the petitioner was declared as proclaimed person/ absconder, in the trial arising out of FIR No.15 dated 23.01.2014, under Sections 406 & 420 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Phase-1, SAS Nagar as well as all the subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner has iterated that the impugned order, whereby the petitioner has been declared a proclaimed

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person, is wholly illegal, arbitrary, and unsustainable in the eyes of law. Learned counsel has further iterated that the petitioner has been falsely implicated into the FIR in question. It is argued that in relation to the FIR in question, the petitioner was never ever called for any inquiry or investigation, at any moment of time, by the police despite the fact that the petitioner is residing in the same address as mentioned in the FIR in question. Learned counsel has iterated that there are grave violations of mandatory provisions as contained in Section 82 of the Cr. P.C. inasmuch as the petitioner was never informed or tried to be contacted on the address mentioned in the FIR in question; publication was not done in a conspicuous place; no report was prepared or recorded *qua* service of summons/ bailable/ non-bailable warrants issued in the name of the petitioner; nothing was inquired from the neighbourhood of the petitioner and it was not published in the newspaper regarding declaration of the petitioner as proclaimed person. It is further contended that on 18.11.2016, while relying upon an false report of service, the learned Court below declared the petitioner as proclaimed person/ absconder. Learned counsel has further iterated that after gaining knowledge about pendency of proceedings in respect to FIR in question as also said proclamation order, the petitioner preferred an application before the concerned Court seeking bail and vide order dated 03.07.2023 (Annexure P-3), the petitioner was granted concession of interim bail. Learned counsel has further argued that due to non-communication of the said order to the petitioner, he could not join investigation and, thus, vide

order dated 12.07.2023 (Annexure P-4), said application of the petitioner was dismissed, which on untenable and unsustainable grounds.

Learned counsel argues that without complying with the mandatory requirements of Sections 82 and 83 Cr. P.C., the learned Court below, vide impugned order dated 18.11.2016, declared the petitioner a proclaimed person/ absconder. Learned counsel asserts that the impugned order is *ex facie* illegal, arbitrary, and unsustainable, having been passed in patent violation of the statutory mandate, and is therefore liable to be set aside. Consequently, the order declaring the petitioner a proclaimed person/ absconder is unsustainable in the eyes of law and deserves to be quashed.

3. Learned State counsel, while referring to the short reply filed by way of an affidavit dated 31.10.2023, already on record, has opposed the present petition. While refuting the case set up by the petitioner, detailed arguments have been advanced on merits, contending that during investigation, raids were conducted at the house of the petitioner as well as other suspected places, however, the petitioner could not be arrested as he was evading his arrest. Accordingly, proceedings under Section 82 of the Cr. P.C. were launched and arrest warrants were also got issued against the petitioner, but despite several efforts, the petitioner could not be arrested. It is further reargued that proclamation order was rightly issued against the petitioner, which were duly executed in accordance with law, but despite this as well, the petitioner did not appear before the Court below. Consequently, it is argued, the petitioner has been rightly declared a proclaimed person vide the impugned order. It has further been submitted 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 procedural irregularity is discernible from the record. Learned State counsel has further contended that despite grant of interim bail, the petitioner willfully chose not to join investigation, and therefore, his bail application was also rightly rejected by the trial Court. Learned State counsel, thus, contends that the conduct of the petitioner clearly reflects deliberate defiance of the judicial process and misuse of the concession of bail earlier granted to him. Accordingly, dismissal of the instant petition has been prayed for.

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 that the provisions of Section 82 of Cr. P.C. are mandatory in nature, and any non-compliance thereof vitiates the entire proceedings. It is argued that the petitioner was never ever informed or tried to contact for any inquiry or investigation *qua* FIR in question. It is also argued that no service report was recorded in respect to execution ofailable/ non-ailable warrants issued against the petitioner. It is further asserted that mandatory provisions of Section 82 of Cr. P.C. were not followed in its totality while issuing of proclamation against the petitioner. However, the trial Court, vide impugned order dated 18.11.2016, proceeded to declare the petitioner a proclaimed person, which is not shown to have been executed in conformity with the

mandatory procedure prescribed under Section 82 Cr. P.C. A declaration of proclamation, being a serious coercive measure, demands strict compliance with the statutory safeguards; any deviation strikes at the root of procedural fairness and renders the proclamation legally unsustainable.

Concededly, upon filing of an application seeking bail, the petitioner was granted concession of interim bail vide order dated 03.07.2023 by the concerned Court below. A perusal of the same reveals that the Court below, while extending the concession of interim bail to the petitioner, had also found that the petitioner was never personally served; thus, service upon the petitioner appears, wholly, contrary to the requirements of Section 82 Cr. P.C. However, on account of non-joining of investigation by the petitioner, the said application for bail was dismissed vide order dated 12.07.2023 by the concerned Court. Learned counsel has argued that due to non-communication of the order dated 03.07.2023, the petitioner could not join the investigation. He has, however, submitted that the petitioner is ready and willing to join proceedings pending against him.

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 compliance of 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).”

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 CriLJ 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 an intent to evade arrest. This foundational requirement is conspicuously absent in the present case. Perusal of the impugned order dated 18.11.2016 reveals 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.

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.

10. Hence, no useful purpose would be served by keeping the criminal proceedings pending against the petitioner. 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 18.11.2016 (Annexure P-2) passed by the Chief Judicial Magistrate, Mohali, whereby, the petitioner was declared as proclaimed person/ absconder, in the trial arising out of FIR No.15 dated 23.01.2014, under Sections 406 & 420 of the Indian Penal Code, 1860 (for short ‘IPC’), registered at Police Station Phase-1, SAS Nagar 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

December 19, 2025
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No