

2025:PHHC:025741



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

**CRM M-40814 of 2024
Date of Decision: 19.02.2025**

Gurdev Singh ... Petitioner

Versus

State of Punjab ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Piyush Sharma, Advocate, for the petitioner.

Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 528 of BNSS, 2023, with a prayer to quash the order dated 20.01.2024 (Annexure P-1) passed by the Court of Judicial Magistrate 1st Class, Zira, whereby, the petitioner has been declared as proclaimed offender in a trial arising out of FIR No. 75 dated 20.06.2020 under Sections 307, 506, 148 and 149 IPC and Sections 25 and 27 of the Arms Act registered at Police Station Makhu, District Ferozepur.
2. Learned counsel for the petitioner contends that a false FIR No. 75 dated 20.06.2020 under Sections 307, 506, 148 and 149

IPC and Sections 25 and 27 of the Arms Act was registered at Police Station Makhu, District Ferozepur against the petitioner and others. In fact, the complainant had made a futile attempt to convert a civil dispute into a criminal case. The petitioner was not aware of the registration of the FIR in the present case and non-bailable warrants were ordered to be issued against him. However, the warrants were never served on him. Admittedly, vide order dated 21.10.2023 passed by the Court of Judicial Magistrate 1st Class, Zira, the proclamation under Section 82 Cr.P.C. was ordered to be issued for appearance of the petitioner for 29.11.2023. Again, on 29.11.2023, the case was taken up by the Judicial Magistrate 1st Class, Zira and the statement of serving official was recorded. The serving official stated that he had published the proclamation against the petitioner on 24.11.2023. Consequently, the statutory period of 30 days had not elapsed on 29.11.2023 and the case was adjourned to 16.12.2023, awaiting the presence of the petitioner. Learned counsel submits that again on 16.12.2023, the petitioner was not declared as proclaimed offender and the case was adjourned to 20.01.2024 for awaiting the presence of the accused/petitioner. Ultimately, vide order dated 20.01.2024, the petitioner was declared as proclaimed offender in the present case. Learned counsel further contends that the repeated adjournments were granted by the Court of Judicial Magistrate 1st Class, Zira in violation

of mandatory provisions of Section 82 Cr.P.C. and the impugned order dated 20.01.2024 is liable to be set-aside by this Court.

3. On the other hand, learned State counsel had vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner had intentionally not appeared before the trial Court for several months and is not entitled for any relief. It was submitted that the petitioner had the knowledge of pendency of the proceedings against him, however, he chose not to appear before the trial Court and the petition is liable to be dismissed. However, learned State counsel could not rebut the factual submissions made by learned counsel for the petitioner in the present case.

4. It has been held by this Court in the matter of **Ashok Kumar Vs. State of Haryana and Anr.2013(4) RCR (Criminal) 550** as under:

3. "As per order dated 04.01.2013 passed by the learned Additional Chief Judicial Magistrate, Panipat the case has been adjourned for 06.03.2013 for issuing of proclamation under Sections 82 and 83 Cr.P.C. against petitioner Ashok Kumar. The order dated 06.03.2013, shows that proclamation issued against Ashok Kumar received back duly executed. Statement of Serving Constable was also recorded. Period of 30 days had not elapsed from the date of publication. Therefore, the case was adjourned to 13.3.2013. On that day, the petitioner was declared as proclaimed offender. The original record

also shows that the statement of the serving official, namely, ASI Dilbag Singh was recorded on 6.3.2013, who stated that on 9.2.2013, he visited the place of residence of the accused along with proclamation. After reading publicly, the proclamation was affixed at conspicuous part of the house of the accused where he ordinarily resides. A copy of the proclamation was also affixed at conspicuous part of the Court house, which means that the publication was effected on 9.2.2013 for 6.3.2013, which shows that after the publication of the notice, the accused was not given the mandatory period of 30 days to appear before the Court. The mere fact that the Court adjourned it after the period of 30 days will not be treated as compliance of the provisions of Section 82 (1) Cr.P.C. where it is provided that :-

“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.

(1) xx xx xx xx xx xx xx

(2) xx xx xx xx xx xx xx

4. “In view of the above provisions of Section 82(1) Cr.P.C., it is clear that the publication was effected on 9.2.2013 and the accused was directed to appear in the

Court as per that publication on 6.3.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned order on 13.3.2013, the publication has been effected as per the provisions of Section 82 Cr.P.C. There was no order in the publication for the accused giving specified time and place to appear on 13.3.2013. Therefore, this order is not as per law and the same is set aside”.

5. Still further, it has been held by this Court in the matter of ***Avtar Singh Vs. State of Punjab and Anr. in CRM-M-1866-2017*** which is as under:-

“The above quoted provision is clear that through the proclamation made prior to declaration of a person as a proclaimed offender, he should be given not less than thirty days from the date of its proclamation to appear at a specified place and a specified time.

In the case in hand, thirty days were not given to the petitioner to appear before the Trial Court as the proclamation was made on 13.05.2011 requiring him to appear before the Trial Court on 14.05.2011. Thus, the proclamation and the subsequent order dated 03.09.2011 (Annexure P-2) declaring the petitioner to be a proclaimed offender do not confirm with the mandate of Section 82 (1) of the Code”.

6. In the present case also, this Court has no hesitation to hold that the mandatory provisions of Section 82 Cr.P.C. had not been complied by the trial Court. Vide order dated 21.10.2023 (Annexure

P-3), the proclamation was issued under Section 82 Cr.P.C. for 29.11.2023. However, the proclamation was published on 24.11.2023 and the statutory period of 30 days was not complete on 29.11.2023 and the Court adjourned the case to 16.12.2023 for awaiting the presence of the accused. Again, on 16.12.2023, the case was adjourned to 20.01.2024, awaiting the presence of the petitioner and ultimately on 20.01.2024, he was declared as proclaimed offender. However, such adjournments can never be construed as sufficient compliance of the provisions of Section 82(1) of Cr.P.C. Thus, in view of the mandatory provisions of Section 82 Cr.P.C. and the ratio laid down by this Court in the matter of **Ashok Kumar and Avtar Singh (supra)**, it can be safely concluded that the trial Court had not complied with the provisions of Section 82 Cr.P.C., while declaring the petitioner as proclaimed offender.

7. As a consequence, the impugned dated 20.01.2024 (Annexure P-1) passed by the Court of Judicial Magistrate 1st Class, Zira and all subsequent proceedings arising therefrom are ordered to be quashed qua the petitioner.

8. Consequently, the petitioner is permitted to surrender before the learned trial Court/Area Magistrate/Duty Magistrate within a period of six weeks from today and on his surrender, he shall be admitted to bail by the concerned Court on his furnishing bail

bonds/surety bonds to the satisfaction of the concerned Court. The Court, which admits the petitioner to bail, shall also be at liberty to impose such reasonable conditions, as provided by law. In case, the petitioner does not surrender within a period of six weeks from today, the present petition shall be deemed to be dismissed by this Court.

9. The petition is disposed off in above terms.

19.02.2025

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No