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

CRM-M-42988-2025 (O&M)

Date of Decision: 23.09.2025

DAVINDER SINGH

..... Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

..... Respondents

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present : Mr. Jagdeep Singh Virk, Advocate and
Mr. Anmol Singh Virk, Advocate
for the petitioner.

Mr. G.S. Dhaliwal, AAG, Punjab.

Mr. Gursharan Singh, Advocate
for respondent No.2.

YASHVIR SINGH RATHOR, J. (Oral)

1. Present petition has been instituted under Section 528 of BNNS, 2023 for quashing order dated 02.08.2023 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Batala whereby the petitioner has been declared as a proclaimed person in case bearing CNR No: PBGDA10013192020 titled as 'State Vs. Harbhal Singh etc.' along with other consequential proceedings arising from the same.

2. Both the parties have been heard and material placed on the file has been perused.

3. Learned counsel for the petitioner contended that he has been wrongly been declared as a proclaimed person. He never received any summons/warrants from the Trial Court and the summons as well as



the warrants issued against him remained unexecuted. Infact, he had gone abroad and even in the order dated 10.01.2023, it was reported on the non-bailable warrant that he has gone abroad. However, the learned Trial Magistrate instead of getting him served through Ministry of Home Affairs observed that he has absconded or is concealing himself to avoid the warrants and ordered issuance of proclamation under Section 82 Cr.P.C. against him and a short cut method was, thus, adopted which is illegal.

4. Learned counsel further contended that proclamation was ordered to be issued for various dates which could not be executed and finally the proclamation was ordered to be issued for 06.06.2023 vide order dated 18.04.2023 and serving constable was summoned for his statement on 01.05.2023. Learned counsel next contended that on 01.05.2023, the proclamation was received back executed and case was adjourned to 06.06.2023 for awaiting of presence of the accused. However, on 06.06.2023, presiding officer was on leave and case was adjourned to 02.08.2023 for appearance of accused and he was declared a proclaimed person on 02.08.2023. Learned counsel contended that no proclamation had been issued for 02.08.2023 which had infact been issued for 06.06.2023 and since no proclamation had been issued for 02.08.2023, petitioner had no knowledge that he was required to appear before the Trial Magistrate on 02.08.2023 and a material illegality has, thus, been committed.

5. Learned counsel further contended that proclamation had also not been read publicly in some conspicuous place of the town where the accused resided which again is a material illegality as by not reading



out the proclamation publicly, accused has been deprived of the knowledge of proclamation and on their score also, proclamation notice is liable to be quashed. In support of his contentions, learned counsel has relied upon CRM-M-41656-2023 titled ***Pardeep Kumar Vs. State of Haryana*** vide judgment dated 23.8.2023, 2022(1) Law Herald 219 titled ***'Rahul Dureja and another Vs. State of Punjab'*** and 2021(1) RCR (Criminal) 493 titled ***'Harvinder Singh Vs. State of Haryana and another'***.

6. On the other hand, learned State counsel argued that petitioner could not be served when his non-bailable warrants were issued and thereafter, proclamation under Section 82 Cr.P.C was ordered to be issued and he was declared a proclaimed offender. Learned State counsel contended that impugned order is well reasoned and speaking and does not call for interference and petition deserves to be dismissed.

7. Before proceeding further, orders dated 10.01.2023, 08.04.2023, 01.05.2023, 06.06.2023 and 02.08.2023 are being reproduced as under:-

"Order dated 10.01.2023

Accused Harbhal Singh has come present and his presence has been marked in the zimni sheet.

Perusal of the file reveals that interim bail has been granted to the accused Jaspinder Singh@ Bhinda was made absolute vide order dated 22.10.2019 passed by the court of Sh. K.K Singla the then Learned Additional Sessions Judge, Gurdaspur. In compliance of the above said order, accused above namely hereby admitted on bail on furnishing of bail bonds in the sum of Rs. 25,000/- each with one surety of like amount. Bail bonds and surety bonds on behalf of accused



Jaspinder Singh@ Bhinda furnished which are accepted and attested.

Non bailable warrants issued against accused Davinder Singh received back with the report that he has gone abroad. Perusal of file reveals that previously bailable warrants have been issued but same were received back unserved due to non availability of the accused. Hence, these facts compelled this court to believe that accused is absconded or concealing himself so that warrants could not be executed. Therefore, this court left with no course rather to adopt the process of proclamation. Now written proclamation under section 82 Cr.P.C. against accused be issued for 17.02.2023. Process Serving Official is directed to affix the proclamation at some conspicuous place of town/village where the accused ordinarily resides and one copy shall be fixed at some conspicuous part of the court house. Process Serving Constable is directed to appear in the court on 17.03.2023. for got recording his statement with regard to due execution of proclamation as per this order. Non-bailable warrants issued against accused Ravinder Singh received back unexecuted. Let non-bailable warrants against accused be again issued for 17.02.2023.

Order dated 18.04.2023

Accused Ravinder Singh has come present and his presence has been marked in the zimni sheet. Copies of challan were supplied to the accused Ravinder Singh as per requirements of under-Section 207 Cr.P.C free of cost. His separate statement was recorded in this regard.

Perusal of the file reveals that interim bail has been granted to the accused Ravinder Singh was made absolute vide order dated 22.10.2019 passed by the court of Sh. K.K Singla the then Learned Additional Sessions Judge, Gurdaspur. In compliance of the above said order, accused above namely hereby admitted on bail on furnishing of bail bonds in the sum of Rs. 25,000/- each with one surety of like



amount. Bail bonds and surety bonds on behalf of accused Ravinder Singh furnished which are accepted and attested.

Proclamation not issued against accused Davinder Singh by concerned Ahlmad, she is warned to remain careful in future. let fresh written proclamation be issued against accused Davinder Singh for 06.06.2023.

Process Serving Constable is directed to appear in the court on 01.05.2023 for got recording his statement with regard to due execution of proclamation as per this order.

Order dated 01.05.2023

An application for exemption has been moved on behalf of accused Dawinder Singh. In view of the averments mentioned in the application same stands allowed for today only. Proclamation issued against accused Davinder Singh received back duly executed. In this regard separate statement of serving official Ct. Lovely No. 2075/BTL also recorded. Proclamation was duly effected on 24.04.2023. Since the stipulated period of 30 days to await the presence of accused has not been elapsed. Now to come up on 06.06.2023 for awaiting appearance of accused Davinder Singh.

Order dated 06.06.2023

File put up before duty Magistrate as Learned Presiding Officer is on summer vacation w.e.f. 01-06-2023 to 15-06-2023. Now the case stands adjourned to 02-08-2023 for the purpose already fixed. File be sent back to the concerned Court immediately.

Order dated 02.08.2023

Today, the case was fixed for awaiting appearance of accused Dawinder Singh. Since the statutory period of 30 days to await the presence of accused has been elapsed, as such, accused Dawinder Singh son of Harbhal Singh resident of Dhawan is hereby declared as proclaimed person. Let necessary intimation in this regard be sent to the concerned police station. Notice to concerned SHO be issued



for filing list of property of accused Dawinder Singh for 14.09.2023 to initiate proceedings under-section 83 Cr.P.C against him as well as consideration on charge.”

8. A Coordinate Bench of this Court while deciding **Pardeep Kumar**’ case (supra) has held that before issuance of proclamation under Section 82 of Cr.P.C., the Court must deliberate on its previous efforts to secure presence of the accused through other legally permissible means. These efforts encompass issuance of summons and the execution of bailable and/or non-bailable warrants against the accused. It is incumbent upon the Court to ascertain that individual in question has indeed absconded or is concealing himself to evade execution of warrants of arrest. It has been further held that phrase, ‘reasons to believe’ as articulated in Section 82 of Cr.P.C. signifies that the Court must derive its belief from the available evidence and material that the concerned person has absconded or is concealing himself to evade the execution of warrants of arrest. It has been further held that once proclamation is issued, it must be set forth in the proclamation as to where and when the concerned individual must present himself. A designated location and time must be stipulated. Importantly, the specific date and time for appearance should not be less than 30 days from the date of publication of the proclamation.

9. A perusal of the order dated 10.01.2023 shows that non-bailable warrant issued against the accused was received back with the report that he has gone abroad but no effort was made to get the warrant served through the Ministry of Home Affairs and Trial Court straightway ordered issuance of proclamation under Section 82 Cr.P.C. It is pertinent to mention here that the challan was initially presented on 06.04.2020 and



the case was adjourned for summoning of accused but the same remained pending on various dates initially due pandemic COVID-19 and thereafter for service of the accused persons and accused, thus, never had the knowledge that he has been summoned to face the trial. Moreover, no efforts were made to secure the presence of petitioner by issuing warrants through Ministry of Home Affairs. Thereafter, proclamation was ordered to be issued for 06.06.2023, but on that date, presiding officer was on leave and case was adjourned to 02.08.2023 and petitioner was declared proclaimed person on 02.08.2023. However, no proclamation had been issued for 02.08.2023 and as such, accused did not have the knowledge of proceedings under Section 82 Cr.P.C, Rather, the Court was required to publish proclamation with specific date and place where accused was to present himself and on this score only, the proclamation proceedings are liable to be quashed.

10. There is also no material that the proclamation was publicly read in some conspicuous place of the town where the accused ordinarily resided. A Coordinate Bench of this Court in ***Rahul Dureja*** case (supra) has held that if there is non-compliance of mandatory provisions of Section 82(2)(i)(a) of Cr.P.C. and proclamation is not read publicly in some conspicuous place of the town or village where the accused ordinarily resides, the accused is deprived of the knowledge of proclamation and on this score, the proclamation notice is liable to be quashed. In ***Harvinder Singh*** case (supra) it has been further held that if proclamation is not read publicly in the village where accused resided, it is not an irregularity but it renders proclamation and subsequent proceedings as nullity. On this score also, the proceedings initiated under



Section 82 Cr.P.C. against the petitioner are invalid. As such, proper procedure has not been followed while declaring petitioner a proclaimed person and the impugned order, thus, suffers from material irregularities and illegalities and the same is, thus, not sustainable and is liable to be set aside.

11. As a result of aforesaid discussion, I am of the considered opinion that proper procedure has not been followed by the trial Court while declaring petitioner a proclaimed person and the impugned order, thus, suffers from material irregularities and illegalities and the same is, thus, not sustainable and is liable to be set aside. Accordingly, the present petition is accepted and the impugned order dated 02.08.2023 (Annexure P-2), vide which, the petitioner was declared proclaimed person is set aside.

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

(YASHVIR SINGH RATHOR)
JUDGE

23.09.2025
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No