



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

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CRM-M-47258-2024 (O&M)

Date of decision: 17.03.2025

Mohd Talha**...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Munish Puri, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. CRM-10605-2025

Allowed as prayed for, subject to all just exceptions.

Documents are taken on record.

2. CRM-M-47258-2024 (O&M)

The instant petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 for quashing of order dated 26.10.2015 (Annexure P-13), passed by the Court of learned Judicial Magistrate First Class, Palwal in case titled as *State vs. Mohd. Ayyaj and others*, arising out of FIR No. 302 dated 12.11.2011, registered under Sections 302, 406, 420, 364-A, 387, 201 and 120-B of IPC and Sections 25, 27 of the Emigration Act at Police Station Chand Hut, Palwal, whereby the petitioner had been declared a proclaimed offender.

3. 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 the aforementioned case. He was not named in the FIR



and was nominated as accused on the basis of the disclosure statement suffered by co-accused Mohammad Vaish. It is further submitted that the petitioner was under a *bona fide* impression that he had been exonerated in the case during the course of investigation. Even a cancellation report was presented subsequently. However, later on, the final report was presented by the police before the Court. The petitioner was not aware about pendency of the trial against him and even his address was wrongly mentioned in the warrants. 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 prescribed under Section 82 of Cr.P.C. Even otherwise, all the accused persons including Mohammad Vaish, on the basis of whose disclosure statement the petitioner was nominated in this case, have been acquitted by the learned trial Court, vide judgment dated 13.12.2019. Hence, it is urged that the impugned order is liable to be set aside.

4. *Per contra*, learned State counsel has argued that there is no infirmity or illegality in the impugned order as the petitioner had intentionally avoided his appearance before the learned trial Court. Hence, it is urged that the petition is liable to be dismissed.

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

6. 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 of 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 26.10.2015 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

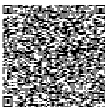
7. After going through the material placed on record as well as the copies of zimni orders passed by the learned trial Court, it is revealed that on 07.08.2015, since the non-bailable warrants issued against the petitioner were received back unserved, the learned trial Court had ordered for issuance of proclamation against him for 28.09.2015. A bare perusal of this order shows that the learned trial Court before ordering for publication of proclamation has not recorded its proper satisfaction that the petitioner had absconded or was concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence, which was in violation of the provisions of Section 82(1) of Cr.P.C. Reliance in this regard can be placed upon ***Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561.***

8. Further, a perusal of the statement of the serving police official HC Bharat Bhushan reveals that the proclamation was executed on 10.09.2015 requiring the petitioner to cause his appearance before the learned trial Court on 28.09.2015, which means that the petitioner was not granted mandatory period of 30 days to cause his appearance before the Court concerned. Hence, the same was in clear violation of the provisions of Section 82(1) Cr.P.C., 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.***



9. Further, a perusal of the statement of the serving police official also reveals that the proclamation was not read over in some conspicuous place of the town or village in which the petitioner was supposed to be residing. As per Section 82 (2) of 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.***

10. 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 26.10.2015 (Annexure P-13), passed by the Court of learned Judicial Magistrate First Class, Palwal in case titled as ***State vs. Mohd. Ayyaj and others***, arising out of FIR No. 302 dated 12.11.2011, registered under Sections 302, 406, 420, 364-A, 387, 201 and 120-B of IPC and Sections 25, 27 of the Arms Act, 1959 at Police Station Chand Hut, Palwal, whereby the petitioner had been declared a proclaimed offender, is quashed with all consequential proceedings arising therefrom. The petitioner is directed to surrender before the learned trial Court within a period



of 15 days from today and on doing so, the learned trial Court shall release him on bail, subject to his furnishing personal/surety bonds to its satisfaction.

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

12. It is made clear that in case the petitioner fails to appear before the learned trial Court within the stipulated time, this petition shall be deemed to be dismissed.

13. However, this relief shall be subject to payment of cost of Rs. 5,000/-, to be deposited by the petitioner with the District Legal Services Authority, Palwal.

17.03.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No