

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

122

CRM-M-43611-2025

Date of Decision : 27.10.2025

GURWINDER SINGH @ GURVINDER SINGH

...Petitioner

VERSUS

STATE BANK OF INDIA

...Respondent

CORAM: HON'BLE MS. JUSTICE AARADHNA SAWHNEY

Present: Mr. Naveen Bawa, Advocate
for the petitioner.

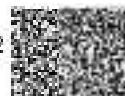
Mr. Chandeeep Singh, Advocate
for the respondent-SBI.

AARADHNA SAWHNEY, J. (ORAL)

1. By virtue of the present petition, petitioner, who was an accused in criminal complaint bearing COMA No.38447 of 2013 titled as "*State Bank of India Vs. Gurvinder Singh*", has assailed the order dated 20.10.2015 (Annexure P-8) passed by the learned Judicial Magistrate Ist Class, Ludhiana, vide which he (petitioner) was declared "*Proclaimed Absconder*".

2. While questioning the legality of the aforesaid order passed by learned JMIC, learned counsel for the petitioner has raised three fold submissions:

Firstly, that the financial dispute between petitioner-accused and respondent-complainant (SBI) had been settled in Lok Adalat at DRT-II, Chandigarh, way back in 2016. Letter dated 05.04.2016 issued by State Bank of India (appended as Annexure P-3) has also been referred by learned counsel for the petitioner.



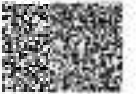
3. Mr. Chandeeep Singh, Advocate appears on behalf of the respondent-SBI. Learned counsel on the instructions of Manager, SBI, SARB, Ludhiana, endorses the factum of compromise.

The second submission raised by the petitioner is that in the light of the aforesaid development, the petitioner was under the impression that his presence was no more needed in the trial Court; the matter having been already settled in the Lok Adalat held at DRT-II, Chandigarh. Probably the requisite information was not sent/supplied/given to the learned trial Court, which proceeded to procure the present of petitioner-accused initially through non-bailable warrants and by way of proclamation publication.

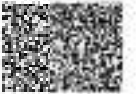
4. Learned counsel further submits that before issuing proclamation proceedings, learned JMIC did not even record a finding that petitioner is deliberately avoiding to appear in the Court. There was no report before the Ld. JMIC to the effect that the petitioner is deliberately concealing himself, as a consequence of which warrants of arrest could not be executed against him. In the light of the proceedings as stand recorded in the interim orders, as per learned counsel, issuance of the proclamation proceedings is not in conformity with the procedure so laid down under Section 82 Cr.PC. With this backdrop, it has been prayed that the impugned order be set aside.

5. I have heard learned counsel for the parties and perused the case file carefully.

6. Before proceeding further, it would be appropriate to refer to a judgment of Coordinate Bench of this Court in **CRM-M-23777-2020** titled **Sonu V/s. State of Haryana**, decided on 06.10.2020, wherein the essential requirements of section 82 Cr.P.C. for issuance and publication of proclamation against an absconder and declaring him as proclaimed person/offender were discussed 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 Vs. 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.. (See Rohit Kumar Vs. 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 Vs. Emperor: AIR 1943 Patna 366 and Devender Singh Negi Vs. 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 Vs. State of Mysore : 1969 Cri LJ 826 and Shokat Ali Vs. 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 Vs. State of Punjab (P&H) : 2015 (8) R.C.R. (criminal) 166 and Ashok Kumar Vs. 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.. 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*



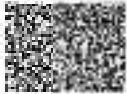
conspicuous part of the Court-house. The three sub-clauses (a)-(c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. (See Pawan Kumar Gupta Vs. The State 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 Court-house 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 Vs. 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.. 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 Vs. State : 1958 CriLJ 965).

(xi) The conditions specified in Section 82(2) of the Cr.P.C. 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 Vs. State of U.P. and another : 1994 CriLJ 1783 and Pal Singh Vs. The State : 1955 CriLJ 318).

7. It is, thus, clear that the Court which issues proclamation under Section 82 Cr.P.C., must record specific reason/satisfaction that the accused against whom the proceedings are being initiated has absconded or concealed



himself to evade the arrest. Even when proclamation proceedings were initiated against petitioner, in terms of the order dated 06.06.2015, no finding was recorded by the learned Magistrate that the petitioner is deliberately avoiding to appear before the Court has concealed himself, his presence cannot be secured through ordinary process and hence, the issuance of the proclamation.

8. Resultantly, in view of the discussion made hereinabove, the impugned order dated 20.10.2015, whereby the petitioner was declared ‘*Proclaimed Absconder*’, is set aside.

9. Learned counsel submits that the petitioner undertakes to appear before the learned trial Court.

10. In view of the facts mentioned hereinabove, the present petition is hereby allowed with a direction to the petitioner to appear before the Court concerned within a period of 15 days from today.

(AARADHNA SAWHNEY)
JUDGE

27.10.2025
Nisha Yadav

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No