

2025:PHHC:001539



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

267

**CRM M-54702 of 2024 (O&M)
Date of Decision: 08.01.2025**

Pardeep ...Petitioner
Versus
State of Haryana ... Respondent

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

Present : Ms. Pooja Jaglan, Advocate, for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the impugned order dated 04.07.2024 (Annexure P-2) passed by the Court of Surya Karan Chaudhary, Judicial Magistrate 1st Class, Kharkhoda, whereby, the petitioner was declared as a proclaimed person in a trial arising out of FIR No. 568 dated 11.09.2022 under Sections 148, 149, 201, 308, 323, 452, 506, 325 and 427 of IPC registered at Police Station Kharkhoda, Sonapat. A further prayer has been made to quash the complaint dated 04.07.2024 under Section 340 read with Section 195(1)(a)(i) of Cr.P.C. for commission of offence under Section 174-A IPC titled as **“Court own its own motion through reader Sh. Balraj Hooda Vs. Pradeep”** (Annexure P-3).

2. Learned counsel for the petitioner contends that the petitioner was falsely involved in case FIR No. 568 dated 11.09.2022 under Sections 148, 149, 201, 308, 323, 452, 506, 325 and 427 of IPC Police Station Kharkhoda, Sonapat. The petitioner was granted the concession of anticipatory bail on 13.03.2023. However, during the pendency of the investigation, the petitioner was granted a student visa for Australia and he had gone to Australia on 25.11.2023 for his studies. Since 25.11.2023, the petitioner has not visited India, which can only be verified from the copy of his passport (Annexure P-1). Learned counsel further contends that during this period, summons/warrants were issued for the service of the petitioner, however, the petitioner was not in India and the same could not be served on him. Still further, the police was aware of the fact that the petitioner had shifted to Australia. However, he was never served through Ministry of External Affairs. Ultimately, vide order dated 03.04.2024 (Annexure P-4), a proclamation was issued for the service of the petitioner and he was required to appear before the trial Court on 25.04.2024, i.e., 22 days after the issuance of the proclamation. On 24.04.2024, the serving constable Umed went to the house of the petitioner and informed Jagpal, uncle of the petitioner about the proclamation. He had affixed one copy of the proclamation on the house of Pardeep, another copy at a conspicuous place in the village and one copy was affixed on the notice board of the trial Court, which is apparent from the report (Annexure P-5). Ultimately, the case was

taken by the trial Court on 25.04.2024. The trial Court in the order dated 25.04.2024 observed that the proclamation issued against the petitioner had been received back duly executed, however, the mandatory period of 30 days had not expired for the appearance of the accused. Consequently, the case was adjourned to 04.07.2024 for the presence of Pardeep, petitioner. On 04.07.2024, vide impugned order (Annexure P-2), the petitioner declared as a proclaimed person. In fact, the reader of the Court was directed to file a separate complaint against the petitioner under Section 174-A IPC. In compliance of the impugned order (Annexure P-2), a complaint under Section 340 read with Section 195(1)(a)(i) of Cr.P.C. for commission of the offence under Section 174-A IPC titled as **“Court own its own motion through reader Sh. Balraj Hooda Vs. Pradeep”** was filed in the Court of Chief Judicial Magistrate, Sonapat.

3. Learned counsel further submits that as per the statement of the serving constable, i.e., Constable Umed, it is apparent that statutory notice of 30 days for appearance of the accused before the trial Court was not given to the present petitioner. Apart from that, the proclamation was not read in the conspicuous place in the village nor the proclamation was published in any newspaper and, thus, the compliance of mandatory provisions of Section 82 of Cr.P.C. was not made.

4. On the other hand, learned State counsel has 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.

5. 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”.

6. 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”.

7. In the present case also, this Court has no hesitation to hold that the mandatory provisions of Section 82 Cr.P.C. have not been complied by the trial Court. Apparently, the proclamation dated 03.04.2024 was issued for the appearance of the accused on 25.04.2024, i.e., after 22 days of the publication. Still further, the trial Court also observed vide order dated 25.04.2024 that the mandatory period of 30 days had not expired since the date of the execution of

the proclamation and the case was adjourned to 04.07.2024 for appearance of the accused. However, the adjournment to 04.07.2024 can never be construed as sufficient compliance of the provisions of Section 82(1) of the Cr.P.C. Thus, in view of the mandatory provisions of Section 82 of Cr.P.C as well as 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(1) Cr.P.C., while declaring the petitioner as proclaimed person. Apart from that, in his statement (Annexure P-5), Constable Umed, who is the serving official also admitted that he had affixed one copy of the proclamation at the house of the petitioner, one in a public place and one on the notice board of the Court. As per the procedure laid down in Section 82(2) Cr.P.C., the proclamation has to be read publicly first in some conspicuous place of the town or the village, in which the accused ordinarily resides and thereafter the same has to be affixed to some conspicuous part of the house or the 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 said procedure clearly provides that the valid publication is made only when all the modes of publication are proved. Further, 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 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. This view has been held by this Court in CRM-M-25921-2020 titled as ***“Harinder Singh Vs. State of Haryana and Anr”***, decided on 22.09.2020.

8. From the above referred discussion, it is evident that the trial Court had wrongly declared the petitioner as proclaimed person and since the matter remained pending quite long, no purpose will be served by sending the petitioner behind the bars after such a long period. Additionally, the matter has also been amicably resolved between the parties and both the parties have signed the compromise deed also.

9. In view of the above discussion, it is held that the petitioner has been wrongly declared as proclaimed person. Consequently, the impugned order dated 04.07.2024 (Annexure P-2) passed by the Judicial Magistrate 1st Class, Kharkhoda and the complaint dated 04.07.2024 titled as **“Court own its own motion through reader Sh. Balraj Hooda Vs. Pradeep”** (Annexure P-3)

registered under Section 340 read with Section 195(1)(a)(i) of Cr.P.C. for commission of offence under Section 174-A IPC are ordered to be quashed.

10. 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.

11. The petition is disposed off in above terms.

12. CRM 43550 of 2024 also stands disposed off accordingly.

08.01.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

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