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

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Date of decision: 04.11.2025

Amarjit Mehmi

...Petitioner

V/s

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Kuljinder Biling, Advocate for the petitioner.
Mr. Amit Goyal, Additional Advocate General, Punjab.
Mr. Madan Lal Saini, Advocate for respondent No.2.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 528 of BNSS, 2023, seeking quashing of order dated 28.10.2016 (Annexure P-5) passed by the Judicial Magistrate Ist Class, District Shaheed Bhagat Singh Nagar whereby the petitioner was declared proclaimed person in case FIR No.23 dated 27.04.2016 registered under Sections 406 and 420 of IPC at Police Station Behram, District SBS Nagar as well as all the proceedings arising therefrom.

2. Learned counsel for the petitioner has iterated that the impugned order whereby the petitioner has been declared a proclaimed offender is wholly illegal, arbitrary and unsustainable in the eyes of law. It has been argued that the Court below has failed to follow due process prescribed under Section 82 of Cr.P.C. Learned counsel has further iterated that the petitioner has been falsely implicated into the present FIR. Learned counsel has argued that the alleged incident pertains to the year 2013

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whereas the FIR was registered after a delay of three years i.e. in the year 2016. After registration of the FIR, non-bailable warrants were issued against the petitioner and co-accused on 04.07.2016. According to learned counsel, on 18.08.2016, the non-bailable warrants against the petitioner were not properly issued by the Ahlmad yet instead of rectifying the same or resorting to the proper procedure under Section 105-B of Cr.P.C. for service abroad, the Court below directly proceeded to issue proclamation under Section 82 of Cr.P.C. Furthermore, order dated 06.10.2016 clearly reflects that the statutory period of 30 days for execution of proclamation has not elapsed and the case was adjourned to 28.10.2016. However, no fresh proclamation was issued intimating the petitioner of a new date which is in contravention with the settled legal position that a fresh proclamation is mandatory upon adjournment. Learned counsel has emphasized that the petitioner was unaware of the FIR or any proceedings thereunder. Furthermore, the petitioner was neither served with any notice nor restrained by the investigating agency despite his regular travel in and out of India as evidenced by his passport (Annexures P-6 and P-7). It has been further submitted that the petitioner is a 77 year old senior citizen and no efforts were made to serve him through the India Embassy or by following the procedure prescribed for service upon persons residing abroad. Thus, the order declaring the petitioner a proclaimed offender is in gross violation of law and principles of natural justice as there was no deliberate evasion or non-appearance on the part of the petitioner. On the basis of these submission, learned counsel has prayed that the impugned order is liable to be set-aside being illegal and unjustified and hence liable to be set-aside.



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3. Referring to the short reply filed by way of an affidavit of Harjit Singh, PPS, Deputy Superintendent of Police, Sub Division Banga, District Shaheed Bhagat Singh Nagar on behalf of the State of Punjab, learned State counsel has reiterated the submissions made therein and opposed the present petition. While refuting the case set up by the petitioner, detailed arguments were advanced on merits, contending that the offence alleged against the petitioner is serious in nature and that the investigation was conducted in a fair and proper manner. Furthermore, it has been submitted by the learned State counsel that the petitioner was served thorough non-bailable warrants but he did not appear which compelled the Court below to declare him proclaimed person vide impugned order. Instead of surrendering before the competent Court, the petitioner has chose to file the instant petition which clearly reflects his conduct that he was fully aware of the proceedings and the coercive measures undertaken by the Court below to secure his presence. Moreover, it has been stated that the learned Court below followed the procedure as laid-down under Section 82 of the Cr.P.C., 1973 in letter and spirit and no discrepancy whatsoever is forthcoming from the records of the case. Accordingly, dismissal of the instant petition has been prayed for.

3.1. Learned counsel appearing for respondent No.2 has raised submission in tandem with the learned State counsel.

4. I have heard the learned counsel for the rival parties and carefully perused the record of the case.

5. The law is well settled that no person can be declared a proclaimed offender/person unless the procedure prescribed under Section

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82 of the Code of Criminal Procedure, 1973 is meticulously adhered to. It is trite law that the provisions of Section 82 are mandatory in nature, and any non-compliance thereof vitiates the entire proceedings. Furthermore, Section 82(1) of the Cr.P.C. clearly provides that before issuing a proclamation requiring a person to appear, the Court must have reason to believe that such person has absconded or is concealing himself so that the warrant cannot be executed. Further, the proclamation must specify a date not less than 30 days from the date of publication for the accused to appear before the Court. In the present case, the record reflects that the summons and warrants were returned unserved and there is no finding that the petitioner was evading service. A perusal of the order dated 06.10.2016 reveals that the learned Magistrate has itself recorded that the mandatory 30 days period from the date of execution of the proclamation has not yet expired and accordingly adjourned the matter to 28.10.2016. The law is well settled that when a matter is adjourned after issuance of proclamation, the Court is required to issue a fresh proclamation intimating the adjourned date. Failure to do so vitiates the subsequent order declaring the accused as a proclaimed offender. The impugned order also reflects non-compliance with the statutory requirement of waiting for a minimum of 30 days after publication of proclamation before declaring an accused a proclaimed offender. In the considered opinion of this Court, clear notice period of not less than 30 days from the date of its publication must be provided in the proclamation itself. The same legal principle squarely applies in the present case.



6. This Court finds the course adopted by the Court below is antithesis to the provisions of Section 82 of the Code of Criminal Procedure, 1973. The Court below has committed illegality by issuing the said proclamation under Section 82 of the Criminal Procedure Code, 1973, without complying the mandatory requirements of law. The learned Court below, while declaring the petitioner as proclaimed offender, failed to satisfy itself regarding due execution of proclamation and proceeded in a mechanical manner. Such an order being violative of mandatory provisions of law, cannot be sustained. Section 82 of the Criminal Procedure Code, 1973 reads as under:

“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.

(2) The proclamation shall be published as follows: -

(i)(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this Section have been complied with, and that the proclamation was published on such day.



[(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459, or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).]”

7. A Coordinate Bench of this Court while dealing with invocation of the provision of Section 82 of the Code of Criminal Procedure, against an accused in the case of ‘**Sonu v. State of Haryana, 2021(1) RCR (Criminal) 319**’, held as under:

“9. The essential requirements of section 82 of the Cr.P.C., 1973 for issuance and publication of proclamation against an absconder and declaring him as proclaimed person/offender may be summarized 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 v. 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., 1973. (See Rohit Kumar v. 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 v. Emperor : AIR 1943 Patna 366 and Devender Singh Negi v. 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 v. State of Mysore : 1969 CriLJ 826 and Shokat Ali v. 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 v. State of Punjab (P&H) : 2015 (8) RCR (CRIMINAL) 166 and Ashok Kumar v. 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., 1973. 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., 1973 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 v. 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 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.*

(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 v. 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., 1973. 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 v. State: 1958 CriLJ 965).

(xi) The conditions specified in section 82(2) of the Cr.P.C., 1973 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 v. State of U.P. and another: 1994 CriLJ 1783 and Pal Singh v. The State: 1955 CriLJ 318)."

8. It is pertinent to mention that it is by now a settled principle of law that before issuing a proclamation under Section 82 Cr.P.C., the Court must record its satisfaction that the accused, against whom the proclamation is sought to be issued, is absconding or concealing himself with intent to evade arrest. This foundational requirement is conspicuously absent in the present case. A perusal of the impugned order dated 27.04.2016 reflects that no such satisfaction was recorded by the Court below nor was there any material to justify the inference that the petitioner had absconded or was deliberately avoiding arrest. Furthermore, the issuance of non-bailable warrants and proclamation without establishing proper service of earlier process(s) shows non-compliance with the due process of law, resulting in serious prejudice to the petitioner.

9. The provisions of Section 82 of the Code of Criminal Procedure having serious ramifications qua the right of the accused concerning his presence in the criminal trial proceedings ought not be and cannot be invoked in casual and cavalier manner. The requirement of recording of satisfaction, that the accused has absconded or is concealing

himself so that warrant of his arrest cannot be executed, as embodied in



Section 82 of the Code of Criminal Procedure, is to be scrupulously complied with based on relevant material available on record of the case in that regard. Non-adherence to said requirement while declaring the accused as proclaimed person vitiates the proclamation proceedings initiated against the accused.

10. Hence, no useful purpose would be served by keeping the criminal proceedings pending against the petitioner, particularly when the petitioner has already joined the investigation and duly cooperated. It is, therefore, an appropriate case for the exercise of powers under Section 482 of Cr.P.C. and to bring to an end the criminal proceedings initiated in the light of the FIR *ibid* against the petitioner.

11. In view of the above findings, in the entirety of facts and circumstances of the present case, the present petition is allowed and the order dated 28.10.2016 (Annexure P-5) passed by the Judicial Magistrate Ist Class, District Shaheed Bhagat Singh Nagar whereby the petitioner was declared proclaimed offender in case FIR No.23 dated 27.04.2016 registered under Sections 406 and 420 of IPC at Police Station Behram, District SBS Nagar as well as the other consequential proceedings arising therefrom are quashed.

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

(SUMEET GOEL)
JUDGE

November 04, 2025
Ajay

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