



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

CRM-M-59877-2024

Date of decision: 23.01.2025

MOHIT KUMAR VERMA ALIAS MOHIT VERMA

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. G.S. Salana, Advocate and
Mr. Gurwinder Singh, Advocate for the petitioner.
Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. Petitioner has filed instant petition for quashing of impugned order dated 16.11.2018 passed by learned JMIC, Ludhiana (Annexure P-2) in FIR No.140 dated 11.04.2018 under Section 381 of IPC registered at Police Station Shimlapuri, Ludhiana (Annexure P-1), whereby petitioner has been declared as proclaimed offender.

2. Brief facts of the case as alleged are that on 10.04.2018, the wife of the complainant informed him on phone call that petitioner, who was employed in his shop, in connivance with his father Bali Ram Verma committed theft in his shop. At that time, the complainant was out of station for the work of company. At about 05:00 PM, the complainant and his wife visited the shop where they saw that one LED 26 Inch, one Fridge Cooler, 40 Boxes PVC, 15 Boxes 8x4, 590 sq. feet grass (artificial grass) 2 Wall Fan, One big table office, 4 Luxury Chairs, 6 customer chairs, all office files, Bill books, stamp, 2 cheque books of company Indosand Bank and Federal Bank, Rs.30,000/- currency notes were found to be stolen. Hence, the FIR (*supra*) was registered.

3. Learned counsel for the petitioner *inter alia* contends that



proclamation was issued against the petitioner without following the drill of Section 82 Cr.P.C. and non-compliance of the mandatory provisions vitiates the entire proceedings, which suffers from incurable illegality as he was never served and the impugned order is liable to be set aside.

4. Learned State counsel supports the order passed by the learned trial Court by contending that the petitioner did not put in appearance before the trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure his presence.

5. I have heard learned counsel for the parties and perused the record of the case with their able assistance, the matter is taken up for final disposal.

6. While the scheme of criminal justice system necessitates curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

7. A perusal of the impugned order reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioner has absconded or is concealing himself. This Court in the judgment passed in ***Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506*** has held that the Court is first required to record its satisfaction before issuance of process under Section 82 of Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in ***Sonu Vs. State of Haryana 2021 (1) RCR (Crl.) 319***, it has been held that the conditions specified in



Section 82 (2) 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.

8. The sole purpose of issuance of non-bailable warrants or issuance of proclamation is to secure presence of the accused before the trial Court. The petitioner in the present case has himself come forward and a compromise has also been effected between the parties.

9. In view of the aforesaid facts and circumstances and in view of the ratio of law laid down in *Major Singh @ Major (supra)*, the present petition is allowed and the impugned order dated 16.11.2018 (Annexure P-2), vide which, the petitioner was declared proclaimed offender, is quashed.

10. The petitioner is directed to appear before the trial Court within a period of two weeks from today and on his doing so, he shall be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.10,000/- to be deposited with the Poor Patients Welfare Funds, PGIMER, Chandigarh, for wasting precious time of the Court.

11. Receipt of payment of cost must be presented before learned trial Court and learned trial Court is directed to verify the same.

12. It is made clear that in case, the petitioner fails to appear before the trial Court within a stipulated period, the interim protection granted by this Court shall be deemed to be vacated.

January 23, 2025
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |