



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

CRM-M-60774-2024
Date of decision: 07.01.2025

Narinder Singh @ Shanty

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Om Malhan, Advocate for the petitioner.

Mr. J.S. Dhaliwal, AAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner under Section 528 of BNSS seeking setting aside of order dated 31.08.2009 (Annexure P-8) passed by the Court of Judicial Magistrate Ist Class, Hoshiarpur, whereby the petitioner has been declared as proclaimed offender in case having FIR No.124 dated 09.07.2004, under Sections 382, 34 of IPC, registered at Police Station Mahilpur, District Hoshiarpur (Annexure P-1).

2. The counsel for the petitioner *inter alia* submits that at the relevant time when warrants of proclamation were executed against the present petitioner, he was not available in India, as is evident from Annexure P-3. It is further submitted that actually, petitioner is permanently residing in Italy and copy of his passport is placed on record. It is further submitted that no notice or warrants with regard to pendency of the aforesaid criminal case were ever sent at his given address in Italy through



the Indian embassy. That the procedure provided in Section 105 Cr.P.C was not followed by the Court concerned while passing the impugned order. It is further contended that even otherwise the impugned order is not sustainable being not passed in conformity with the mandatory provisions of Section 82 Cr.P.C as minimum statutory period of 30 days as prescribed was not afforded to the petitioner to appear before the Court concerned from the date of publication of the proclamation. Furthermore, the matter has been compromised between the parties and the copy of the compromise deed is Annexure P-10.

3. The present petition is resisted by the State counsel who submits that there is no illegality or infirmity in the impugned order (Annexure P-8) which was passed about 15 years back.

4. I have considered the submissions made by counsel for the parties.

5. From the perusal of the document Annexure P-3, it stands proved that before passing of the impugned order, report was received by the Court concerned to the effect that at the relevant time, petitioner was not available in India and had gone abroad. Even now the petitioner is residing in Italy. There is nothing on the record to show that the Court concerned ever made any effort to affect personal service of the petitioner in Italy through the Indian embassy located in that country. Further, as per the documents available on the record, it could be easily made out that the statutory period of 30 days was not given to the petitioner for his appearance before the Court concerned from the date of execution of proclamation against him. Thus, the impugned order is not sustainable, in



the light of the law laid down by this Court in *Ashok Kumar Vs. State of Haryana & Anr. 2013 (4) RCR (Crl.) 550*.

6. In light of the above, it is established that impugned order was not passed by the Court concerned, in accordance with law and it deserves to be set aside. However, the said order was passed more than 15 years back and as such petitioner deserves to be burdened with certain reasonable cost.

7. Consequently, the present petition is allowed and order dated 31.08.2009 Annexure P-8 whereby the petitioner was declared as proclaimed offender in FIR Annexure P-1 is hereby set aside subject to cost of Rs.10,000/- to be deposited by the petitioner in Poor Patients Fund, PGIMER, Chandigarh, within a period of 8 weeks from today.

07.01.2025

Yogesh

**(KARAMJIT SINGH)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No