



S. No.125

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

**CRM-M-60144 of 2025
Date of Decision:10.11.2025**

Viju Vlalil Sivadas

.....Petitioner

Vs.

MTG Learning Media Pvt. Ltd. And anotherRespondents

CORAM:- HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present:- Mr. S.K. Jain, Advocate for the petitioner.

Mr. Vasundhara Dalal Anand, Sr. DAG, Haryana.

Yashvir Singh Rathor, J. (Oral)

CRM No.44358 of 2025

1. This is an application under Section 528 of BNSS, 2023 for impleading the State of Haryana as party respondent No.2.

2. For the reasons mentioned in the application, the same is allowed. State of Haryana is ordered to be impleaded as respondent No.2 in the array of parties. Amended Memo of Parties is taken on record.

CRM-M-60144 of 2025



1. Present petition has been instituted under Section 482 Cr.P.C/528 of BNSS, 2023 for quashing order dated 21.08.2017 (Annexure P5) passed by learned JMIC, Gurugram, in criminal complaint case No.NACT/10786 of 2016 dated 09.09.2016 (Annexure P.1) titled **“M/s MTG Learning Media Pvt. Ltd. Vs. Brilliant Tutorials and others”** under Section 138 of Negotiable Instruments Act whereby the petitioner has been declared as a proclaimed person together with FIR No.185 dated 09.06.2025 (Annexure P.6) registered under Section 174-A IPC at Police Station Sushant Lok, District Gurugram, and all the consequential proceedings arising therefrom.

2. Upon notice, the State Counsel has appeared. Learned counsel for the parties have been heard and material placed on the file has been perused.

3. Learned counsel for the petitioner argued that petitioner has been wrongly declared as a proclaimed person. He never received any summons/warrants from the trial Court and serious efforts were not made by the trial Court to secure his presence. On perusal of the paper book, it is revealed that during the proceedings of case, warrant of arrest against petitioner – Viju Vlalil Sivadas were directed to be issued initially vide order dated 23.12.2016, and the said order was repeated on 09.05.2017 due to receipt of the warrants of arrest as unexecuted. In none the orders passed by the trial Court, it is mentioned as to what was the report on the warrants of arrest. On 09.05.2017, warrant of arrest was received back unexecuted and simply by recording satisfaction that the accused cannot be served through nonailable warrants, proclamation under Section 82/83 Cr.P.C was ordered to be issued. Learned counsel for the petitioner contended that



proclamation under Section 82/83 Cr.P.C was ordered to be issued for 14.07.2017 vide order dated 09.05.2017. Statement of serving constable was recorded and as per statement of executing constable, proclamation was got effected on 29.06.2017 and the case was already fixed for 14.07.2017, which shows that statutory period of 30 days was not provided. However, on 14.07.2017, the case was adjourned to 21.08.2017 for presence of accused. Learned counsel contended that no proclamation had been issued against the accused for 21.08.2017 and as such, he did not have any knowledge that he was required to appear before the Court on 21.08.2017 and since proper procedure has not been followed, impugned order dated 21.08.2017, vide which he has been declared Proclaimed Person is thus illegal and nonest.

4. Learned counsel for the petitioner further contended that the petitioner was declared Proclaimed Person vide order dated 21.08.2017 and now the FIR has been registered on 09.06.2025 for the offence under Section 174-A IPC which is punishable with imprisonment upto three years and no cognizance of the offence can now be taken in view of bar contained in Section 468 Cr.P.C/ Section 514 of BNS which provides that except as otherwise provided elsewhere in the Code, no Court shall take cognizance of an offence after the expiry of period of limitation and limitation to take cognizance shall be three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Learned counsel contended that since FIR has been registered after eight years of the date when petitioner was declared a proclaimed



person, no Court can take cognizance of the said offence in view of bar created by Section 468 Cr.P.C and on this score also, FIR in question is liable to be quashed.

5. On the other hand, learned State Counsel has argued that the petitioner could not be served when his non-bailable warrants were issued and thereafter, proclamation under Section 82 Cr.P.C. was ordered to be issued and he was declared Proclaimed Person. Learned State Counsel has contended that the impugned order is well reasoned and speaking and does not call for any interference and petition deserves to be dismissed.

6. Before proceeding further, relevant orders dated 09.05.2017 and 14.07.2017 are reproduced as under:-

“Non-bailable warrants issued against the accused received back unexecuted. After going through the case file, it is revealed that accused was summoned through different modes but all in vain. Ld. Counsel on behalf of the complainant has stated at bar that accused is very much within the knowledge of the present complaint and he is avoiding the execution of the warrants intentionally. He has further requested that the proclamation proceedings may be initiated against the accused. Heard. I am satisfied that presence of accused could not be procured through ordinary process. Let accused be summoned through proclamation u/s 82 of Cr.P.C for 14.7.2017. Executing onstable is directed to come present for 14.7.2017 for making the statement. Complainant is also directed to come present on 14.7.2017.



Date of Order: 9.5.2017

JMIC/Gurugram
UID No.HR0382
9.5.2017

Statement of Executing Constable qua accused has been recorded. Now to come upon 21.8.2017 for presence of accused.

Date of Order: 14.7.2017

JMIC/Gurugram
UID No.HR0382
14.7.2017

7. On 21.08.2017, the accused was declared as a proclaimed person by passing the following order:-

“Today the case was fixed for presence of accused. Case has been called several times but no one has come present on behalf of the accused. It is already 2.30 p.m. It is futile to wait for presence of the accused. So this court is satisfied that accused has absconded, therefore, accused is declared proclaimed person. Necessary intimation in this regard be sent to concerned police station to initiate proceedings against the accused U/s 174-A IPC.

AR on behalf of the complainant has stated that preliminary evidence given at the time of filing of the complaint be read in his evidence U/s 299 Cr.P.C and he would undertake further exercise of evidence only when the accused is arrested and produced before the court. A red ink note be given on the file and it will not be destroyed



as it will be taken up as and when the accused is arrested and produced before the court. He further stated that he has no knowledge about the property of accused. File be consigned to record room after due compliance.

Date of Order: 21.08.2017

Judl. Magistrate First Class,
Gurugram”

8. A Coordinate Bench of this Court while deciding CRM-M-41656-2023 titled ***Pardeep Kumar Vs. State of Haryana*** vide judgment dated 23.8.2023 has held that before issuance of proclamation under Section 82 of Cr.P.C., the Court must deliberate on its previous efforts to secure presence of the accused through other legally permissible means. These efforts encompass issuance of summons and the execution ofailable and/or non-ailable warrants against the accused. It is incumbent upon the Court to ascertain that individual in question has indeed absconded or is concealing himself to evade execution of warrants of arrest. It has been further held that phrase, ‘reasons to believe’ as articulated in Section 82 of Cr.P.C. signifies that the Court must derive its belief from the available evidence and material that the concerned person has absconded or is concealing himself to evade the execution of warrants of arrest. It has been further held that once proclamation is issued, it must be set forth in the proclamation as to where and when the concerned individual must present himself. A designated location and time must be stipulated. Importantly, the specific date and time for



appearance should not be less than 30 days from the date of publication of the proclamation.

9. A perusal of order dated 09.05.2017 shows that the warrant of arrest issued against the accused was received back unexecuted but the reasons as to why the same have not been executed is not mentioned in the order. However, no satisfaction was recorded by the trial Magistrate that accused has either absconded or is concealing himself to evade the warrants and without recording satisfaction to this effect, the proceedings under Section 82 Cr.P.C. could not have been initiated against the accused. Moreover, no proclamation had been issued for 21.08.2017, which infact, had been issued for 14.07.2017 but on that date, he was not declared a proclaimed person. In this manner, accused did not have any knowledge that he was required to appear before the Court on 21.08.2017, as no proclamation had been issued against him for that date and he was, thus, misled and proper procedure, thus, has not been followed by not mentioning the designated location and time, where he was supposed to appear.

10. Besides this, petitioner was declared proclaimed person under Section 82(1) Cr.P.C vide order dated 21.08.2017 and FIR in question under Section 174- A IPC has been registered on 09.06.2025, which prescribes maximum punishment of three years. Section 468 Cr.P.C provides that except as otherwise provided elsewhere in this Court, no Court can take cognizance of an offence after the expiry of period of limitation and limitation to take cognizance shall be three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Since FIR has been registered after around



eight years from the date when petitioner was declared proclaimed person, the trial Court can take cognizance of the offence after expiry of period of three years from the date he was declared proclaimed person i.e. when the offence was committed. On this score also, the FIR in question is liable to be quashed.

11. As a result of aforesaid discussion, I am of the considered opinion that proper procedure has not been followed by the trial Court while declaring petitioner as a proclaimed person and the impugned order, thus, suffers from material irregularities and illegalities and the same is, thus, not sustainable and is liable to be set aside. Accordingly, the present petition is accepted and the impugned order dated 21.08.2017 (Annexure P-5), vide which, the petitioner was declared a proclaimed person is set aside and FIR No.185 dated 09.06.2025 (Annexure P.6) registered under Section 174-A IPC at Police Station Sushant Lok, District Gurugram and all the consequential proceedings arising therefrom are quashed.

12. Pending misc. applications(s), if any, shall also stand disposed of.

(Yashvir Singh Rathor)
Judge

November 10, 2025
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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No