

CRM-M-60568 of 2025 (O&M) -1-

2025:PHHC:160592



S. No.126

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

**CRM-M-60568 of 2025 (O&M)
Date of Decision:19.11.2025**

Rajan Sharma

.....Petitioner

Vs.

State of Haryana and another

.....Respondents

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

Present:- Mr. Gurmohan Singh Bedi, Advocate
for the petitioner.
Mr. Ramesh Kumar Ambavta, DAG,
Haryana.

Yashvir Singh Rathor, J. (Oral)

1. Present petition has been instituted under Section 482 Cr.P.C/528 of BNSS, 2023 for quashing order dated 07.05.2025 (Annexure P.1) passed by learned JMIC, Gurugram, whereby the petitioner has been declared as a proclaimed person in complaint bearing NACT/5228/2022 dated 02.02.2022 titled “**J.S. Traders Vs. M.S. Modular Private Ltd.**” filed under Section 138 read with Section 420 IPC.

2. Upon notice, learned 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. 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 NACT/5228/2022 dated 02.02.2022 as afore-said, warrants of arrest against petitioner – Rajan Sharma were directed to be issued initially vide order dated 19.02.2024, and the said order was repeated on various

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subsequent dates due to receipt of the warrants of arrest as unexecuted. On 24.10.2024, application for exemption from personal appearance of the accused was dismissed and proclamation under Section 82/83 Cr.P.C was ordered to be issued for 13.01.2025 and executing constable was summoned to make statement on 12.12.2024. On 12.12.2024, proclamation was not received back and the same was issued for 13.02.2025 and executing constable was directed to appear on 13.01.2025 for making his statement regarding proclamation of accused. On 13.01.2025, proclamation issued against petitioner- accused was received back duly executed and statement of executing constable was recorded. An application moved by counsel for the petitioner for exemption of personal appearance of the petitioner- accused was dismissed by the Court and the case was adjourned to 13.02.2025 for appearance of the petitioner- accused. On 13.02.2025, similar was the situation and the case was adjourned to 07.05.2025 for appearance of the petitioner- accused and his application for exemption from personal appearance was dismissed. Learned counsel for the petitioner contended that on 07.05.2025, petitioner was declared a Proclaimed Person. Learned counsel contended that no proclamation had been issued against the accused for 07.05.2025 and as such, he did not have any knowledge that he was required to appear before the Court on 07.05.2025 and impugned order dated 07.05.2025, vide which he has been declared Proclaimed Person is thus illegal and nonest.

4. 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.

5. Before proceeding further, relevant orders dated 19.02.2024, 24.10.2024, 12.12.2024, 13.01.2025, 13.02.2025 and 07.05.2025 are reproduced as under:-

“Order dated 19.02.2024:

Cost not paid. An application for exemption from personal appearance on behalf of accused no.2 moved. In view of the facts mentioned in the application, personal appearance of accused is exempted for today only.

Notice of accusation of accused no.2 not served. Adjournment sought. Heard and allowed. Now, case is adjourned to 14.05.2024 for presence of accused no.2 as well as for serving notice of accusation. Previous cost of Rs.1,000/- to be paid to the complainant by the accused.

Case called several times since morning. None has appeared on behalf of accused no.3. It is already 3:00 p.m. Further wait is unjustified. **Bail of accused no.3 is hereby cancelled.** Bail bonds of the accused no.3 is forfeited to state. Hence, NBW be issued against accused no.3 for 14.05.2024.

Date of Order: 19.02.2024

JMFC, Gurugram
UID No.HR0480

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Order dated 24.10.2024:

Today the case was fixed for serving notice of accusation upon accused No.2. Adjournment sought. Heard and allowed.



Memo of appearance has been filed on behalf of accused Rajan Sharma. Counsel for accused No.3 orally requested for seeking exemption on behalf of accused. However vakalatnama is not on file. In absence of vakalatnama there is no authority for seeking exemption. Accordingly let presence of accused No.3 be secured through proclamation to be issued against accused for 13.01.2025. The executing constable is directed to appear on 12.12.2024 for making his statement regarding proclamation of the accused. Previous cost of Rs.1500/- be also paid to complainant.

Date of Order: 24.10.2024

Judicial Magistrate First Class
Gurugram/UID No.HR0596

Order dated 12.12.2024

Previous cost paid. Separate endorsement in this regard also made. Proclamation issued against accused No.3 not received back. Accordingly let presence of accused No.3 be again secured through proclamation to be issued against accused for 13.02.2025. The executing constable is directed to appear on 13.01.2025 for making his statement regarding proclamation of the accused.

Date of Order: 12.12.2024

Judicial Magistrate First Class
Gurugram/UID No.HR0596

Order dated 13.01.2025:

An application for exemption from personal appearance on behalf of accused Rajat Sharma moved. In view of the facts mentioned in the application, personal appearance of accused is



exempted for today only subject to payment of cost of Rs.500/- to be paid to complainant.

Proclamation issued against accused No.3 received back duly executed. Statement of executing constable has been recorded. As per his report he has published the proclamation on 06.01.2025.

Now, case is adjourned to 13.02.2025 for appearance of accused No.3.

Date of Order: 13.01.2025

Judicial Magistrate First Class
Gurugram/UID No.HR0596

Order dated 13.02.2025:

Today the case was fixed for presence of accused No.3 in pursuance of proclamation under Section 82 Cr.P.C duly published against him.

At this stage, vakalatnama alongwith an application for exemption from personal appearance on behalf of accused No.3 moved. However, it appears that same is only filed to avoid proclamation proceedings. Accordingly exemption application is hereby disallowed. Presence of accused No.3 be awaited for next date.

Arguments on notice of accusation heard. Finding a prima facie case, accused No.2 has been served by way of notice of accusation for the commission of offence punishable U/s 138 Negotiable Instruments Act to which he pleaded not guilty and claimed trial. Plea of defence of accused No.2 under Section 263(g) Cr.P.C also recorded.



The counsel for applicant- accused No.2 has moved an application under Section 145(2) of the Act seeking permission to cross-examine the complainant and the witnesses recorded at the time of preliminary evidence. Heard. In view of the facts mentioned, the application is allowed and permission to cross-examine the complainant and the witnesses recorded at the stage of preliminary evidence, is granted. List on 07.05.2025 for cross-examination of complainant on behalf of accused No.2.

Date of Order: 13.02.2025

Judicial Magistrate First Class
Gurugram/UID No.HR0596

Order dated 07.05.2025:

Perusal of file reveals that inadvertently on the last date of hearing case was adjourned for awaiting presence of accused No.3 in pursuance of proclamation under Section 82 Cr.P.C duly published against him instead of declaring him proclaimed person. This Court is satisfied that accused has absconded and as such **accused No.3 Rajan Sharma is declared proclaimed person.** In this regard an intimation is hereby sent to the concerned SHO with a direction to take necessary action under the provisions of Section 209 of Bhartiya Nyay Sanhita, 2023 (BNS). SHO is further directed to submit a compliance report in this regard to this court on or before the next date of hearing and also to apprehend and produce the accused in the court whenever he is arrested. FIR be lodged within 7 days.

Today the case was fixed for cross-examination of complainant on behalf of accused No.2. Cross-examination not conducted as main



counsel on behalf of accused not present. Adjournment sought by Sh. Bal-mukund, proxy counsel. Heard and allowed subject to payment of cost of Rs.1000/- to be paid to complainant. List on 26.08.2025 for cross-examination of complainant on behalf of accused No.2.

Date of Order: 07.05.2025

Judicial Magistrate First Class
Gurugram/UID No.HR0596”

6. 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 of bailable and/or non-bailable 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.

7. A perusal of order dated 24.10.2024 shows that the warrant of arrest issued against the accused was received back unexecuted and prior to that also,

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the warrants of arrest were received back unexecuted. On 24.10.2024, warrants of arrests were received back unexecuted and no satisfaction was recorded by the trial Magistrate that accused has either absconded or is concealing himself to evade the warrants and that he cannot be served in ordinary manner and without recording satisfaction to this effect, the proceedings under Section 82 Cr.P.C. could not have been initiated against the accused. Besides this, the proclamation was finally issued for 13.01.2025 and executing constable was summoned to make statement on 12.12.2024. On 12.12.2024, proclamation was not received back and fresh proclamation was ordered to be issued for 13.02.2025 and executing constable was directed to appear on 13.01.2025 for making statement. On 13.01.2025, the statement of serving constable was recorded and the case was adjourned to 13.02.2025 for awaiting appearance of the accused. However, on 13.02.2025, similar was the situation and the case was adjourned to 07.05.2025 for appearance of the petitioner- accused and his application for exemption from personal appearance was dismissed. On 07.05.2025, petitioner was declared a Proclaimed Person despite the fact that no proclamation had been issued against the accused for that date i.e. 07.05.2025 and as such, he did not have any knowledge that he was required to appear before the Court on 07.05.2025. In this manner, accused did not have any knowledge that he was required to appear before the Court on 07.05.2025, 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.

8. 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 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 and accordingly, the present petition is accepted and the impugned order dated 07.05.2025 (Annexure P-1), vide which, the petitioner was declared proclaimed person is set aside.

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

(YASHVIR SINGH RATHOR)
JUDGE

November 19, 2025
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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No