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

**CRM-M-66292-2025
Date of Decision: 28.11.2025**

RAHUL KUMAR Petitioner

Versus

STATE OF PUNJAB Respondent

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present : Mr. Satvir Singh, Advocate for
Mr. Kanwaljit Singh, Advocate
for the petitioner (Through V.C).

Mr. Jatinder Pal Singh, Sr. DAG, Punjab.

YASHVIR SINGH RATHOR, J. (Oral)

1. Present petition has been instituted under Section 528 of BNNS, 2023 for quashing order dated 20.01.2025 (Annexure P-9) passed by learned Judicial Magistrate 1st Class, Derabassi whereby the petitioner has been declared as a proclaimed person in case bearing CHA/66/2023 titled as '***State Vs. Dasrath etc.***' in FIR No.63 dated 19.02.2023 under Sections 61 and 78(2) of Punjab Excise Act, 1914 registered at Police Station Zirakpur, District SAS Nagar (Mohali) (Annexure P-1) along with other consequential proceedings arising from the same.

2. Both the parties have been heard and material placed on the file has been perused.

3. Learned counsel for the petitioner contended that he has been wrongly been declared as a proclaimed person. He never received



any summons/warrants from the Trial Court and the summons as well as the warrants issued against him remained unexecuted. Initially, warrant of arrest against petitioner- Rahul Kumar was ordered to be issued vide order dated 19.02.2024 and the said order was repeated on various subsequent dates due to receipt of warrant of arrest as unexecuted. In none of the orders passed by the Trial Court, it is mentioned as to what was the report of warrant of arrest. On 02.09.2024, warrant of arrest was received back unexecuted and simply by recording satisfaction that the accused cannot be served through non bailable warrants, proclamation under Section 82/83 Cr.P.C. was ordered to be issued for 13.12.2024 and serving constable was summoned to make statement on 13.12.2024. On 13.12.2024, proclamation issued against petitioner- accused was received back duly executed and statement of executing constable was recorded and the case was adjourned to 20.01.2025 for awaiting presence of accused as period of 30 days had not been elapsed. On 20.01.2025, he was declared a proclaimed person. Learned counsel contended that no proclamation had been issued for 20.01.2025 which had infact been issued for 13.12.2024 and since no proclamation had been issued for 13.12.2024, petitioner had no knowledge that he was required to appear before the Trial Magistrate on 20.01.2025 and a material illegality has, thus, been committed.

4. Learned counsel further contended that as per order dated 31.05.2025, proclamation issued against accused was received back executed and statement of serving constable was recorded in which he stated that the accused was not present at the house. However, address was incomplete and consequently, he had pasted one copy of the



proclamation at the wall of Ranbir College and one copy at the notice Board of the Court. Learned counsel further contended that proclamation had also not been read publicly in some conspicuous place of the town where the accused resided which again is a material illegality as by not reading out the proclamation publicly, accused has been deprived of the knowledge of proclamation and on their score also, proclamation notice is liable to be quashed. In support of his contentions, learned counsel has relied upon CRM-M-41656-2023 titled ***Pardeep Kumar Vs. State of Haryana*** vide judgment dated 23.8.2023, 2022(1) Law Herald 219 titled ***'Rahul Dureja and another Vs. State of Punjab'*** and 2021(1) RCR (Criminal) 493 titled ***'Harvinder Singh Vs. State of Haryana and another'***.

5. On the other hand, learned State counsel argued that 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 a proclaimed person. Learned State counsel contended that impugned order is well reasoned and speaking and does not call for interference and petition deserves to be dismissed.

6. Before proceeding further, orders dated 29.02.2024, 02.09.2024, 13.12.2024 and 20.01.2025 are being reproduced as under:-

"Order dated 29.02.2024"

Today both accused have not turned up. They absent from the court without any intimation. Perusal of case file shows that accused were earlier appeared in the court but later on he absent from the court without any intimation nor any exemption application has been received. In view of the absence of both the



accused, bail bonds and surety bonds furnished by both the accused are hereby cancelled and forfeited to the State. Now presence of both accused be procured through Non bailable warrants for 27.05.2024.

Judicial Magistrate - Ist Class

UID NO . PB00456

Order dated 02.09.2024

Non-bailable warrants issued against accused Dasrath received back unserved, whereas non-bailable warrants issued against Rahul Kumar not received back. Ld. APP for the State submitted that accused persons were earlier appearing in the Court but later on they absented from the Court without any intimation nor any exemption application has been moved on behalf of the accused persons. Their bail bonds and surety bonds have already cancelled and forfeited to the State. Today, bail granted to the accused persons is hereby cancelled.

In view of the above circumstances, this Court is of the considered opinion that the accused have intentionally absconded from the process of law and the presence of the accused cannot be procured otherwise than through the proclamation warrants under Section 82 Cr.P.C. Thus, in order to procure the presence of the accused Dasrath and Rahul Kumar and in order to expedite the proceedings; the proclamation warrants under Section 82 Cr.P.C. qua the accused Dasrath and Rahul Kumar be issued for 13.12.2024.

A note should be given on the proclamation warrants that the Tamili/Serving Official should execute the same at least before 30 days from the date fixed in the Court. For awaiting the report of proclamation to come up on date fixed.



Judicial Magistrate - Ist Class

UID NO . PB00456

Order dated 13.12.2024

Proclamation warrants issued against the accused Dasrath and Rahul Kumar received back effected but none has turned up. Statement of serving constable recorded. Period of 30 days has not been elapsed yet. As such, case is adjourned to 20.01.2025 for awaiting presence of accused Dasrath and Rahul Kumar.

Judicial Magistrate - Ist Class, Derabassi

UID NO . PB-0456

Order dated 20.01.2025

Today, the case is fixed for awaiting presence of accused Dasrath and Rahul Kumar but none has turned up. Period of 30 days has been elapsed from the date of proclamation. Accused has not turned up in the Court as such accused Dasrath and Rahul Kumar are declared as "Proclaimed Person". Intimation in this regard be sent to concerned SHO. Now, to come upon 29.03.2025 for evidence under section 299 Cr.P.C. Pws mentioned at Sr. No. 3 and 7 be summoned for date fixed.

Judicial Magistrate - Ist Class, Derabassi

UID NO . PB-0456"

7. 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.

8. A perusal of order dated 02.09.2024 shows that the warrant of arrest issued against the accused was received back unexecuted and prior to that also, the warrants of arrest were received back unexecuted but the reasons as to why the same have not been executed is not mentioned in any of the order. After that, the warrant issued for 02.09.2024, was received back unexecuted and the Court recorded its satisfaction that the accused cannot be served through non-bailable warrants and ordered issuance of proclamation under Section 82 Cr.P.C. However, 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 13.12.2024 and after the



statement of serving constable was recorded on 13.12.2024, case was adjourned to 20.01.2025 for awaiting appearance of the accused and accused was ultimately declared a proclaimed person on 20.01.2025. However, no proclamation had been issued for 20.01.2025, which infact, had been issued for 13.12.2024 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 20.01.2025, 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.

9. In the present case, proclamation was ordered to be issued for 13.12.2024 vide order dated 02.09.2024 and serving constable was summoned to make statement on 13.12.2024. On 13.12.2024, the proclamation was received back executed. In his statement, serving constable stated that the accused was not present at the house. However, address was incomplete and consequently, he had pasted one copy of the proclamation at the wall of Ranbir College and one copy at the notice Board of the Court. Furthermore, the proclamation was not read publicly at some conspicuous place of the town, where the accused ordinarily resided. A Coordinate Bench of this Court in ***Rahul Dureja's case (supra)***, has held that if there is non compliance of mandatory provisions of Section 82(2)(i)(a) of Cr.P.C. and proclamation is not read publicly in same conspicuous place of the town or village where the accused ordinarily resides, the accused is deprived of the knowledge of proclamation and on this score, the proclamation notice is liable to be



quashed. In *Harvinder Singh’s case (supra)*, it has been further held that if proclamation is not read publicly in the village where accused resided, it is not an irregularity but it renders proclamation and subsequent proceedings as nullity. On this score also, the proceedings initiated under Section 82 Cr.P.C. against the petitioner are invalid.

10. 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 20.01.2025 (Annexure P-9), 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

28.11.2025
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No