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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-65782-2025
Date of decision: 02.12.2025

SAMAR SAJAN DHUNNA

....Petitioner

Versus

BANK OF INDIA AND ANR.

....Respondents

CORAM:- HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present:- Mr. Surinder Garg, Advocate
for the petitioner.

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RUPINDERJIT CHAHAL, J. (ORAL)

1. This is the 2nd petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, assailing the impugned order dated 11.06.2019 (Annexure P-9), whereby the learned Judicial Magistrate Ist Class, Barnala has declared the petitioner as a proclaimed person. The 1st petition under Section 528 BNSS was filed on 24.10.2024 which was dismissed as withdrawn.

2. Learned counsel for the petitioner submits that complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed against the petitioner. He submits that vide order dated 15.01.2018 the learned Trial Court summoned the petitioner to face trial however, by the time of issuing of summoning orders the petitioner had already gone to Canada. His absence ultimately resulted in his being declared proclaimed person vide order dated 11.06.2019 (Annexure P-9). He further submits that the

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petitioner is now ready to deposit the entire cheque amount and settle the dispute with the complainant.

3. He further argued that petitioner was never served with any notice/warrant as he was out of country even before the issuance of arrest warrants. He further submits that requirements of section 82 Cr.P.C. (section 84 BNSS) were not complied with. He further submits that the petitioner undertakes to appear before the trial Court on each and every date of hearing. Hence, he prays for quashing of the said order.

4. Notice of motion.

5. Mr. Ravinder Singh, DAG Punjab accepts notice on behalf of respondent-State and supports the impugned order, contending that the petitioner deliberately avoided appearance, leaving the trial Court with no option but to issue proclamation to secure his presence.

6. I have heard learned counsel for the parties and perused the record.

7. The criminal justice system, though permitting curtailment of personal liberty, mandates that such deprivation must strictly conform to the procedure established by law. The said procedure must be fair, just, and reasonable in terms of Article 21 of the Constitution of India.

8. A co-ordinate Bench of this *Court* in ***CRM-M-41715-2021 titled "Anita Sharma v. State of Punjab "***, ***date of decision 26.03.2021***, has summarized the essential requirements of Section 82 Cr.P.C. as under:-

*"(i) Prior issuance of warrant of arrest by the **Court** is sine qua non for issuance and publication of the proclamation and the **Court** has to first issue warrant of arrest against the*



person concerned. (See **Rohit Kumar v. State of Delhi: 2008 CrL J. 2561**).

(ii) There must be a report before the **Court** that the person against whom warrant was issued had absconded or had been concealing himself so that the warrant of arrest could not be executed against him. However, the **Court** is not bound to take evidence in this regard before issuing a Proclamation under Section 82(1) of the Cr.P.C.. (See **Rohit Kumar v. State of Delhi: 2008 CrL J. 2561**).

(iii) The **Court** cannot issue the Proclamation as a matter of course because the Police is asking for it. The **Court** must be prima facie satisfied that the person has absconded or is concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence. (See **Bishundayal Mahton and others v. Emperor: AIR 1943 Patna 366** and **Devender Singh Negi v. State of U.P.: 1994 CrL LJ (Allahabad HC) 1783**).

(iv) The requisite date and place for appearance must be specified in the proclamation requiring such person to appear on such date at the specified place.

Such date must not be less than 30 clear days from the date of issuance an publication of the proclamation. (See **GurappaGugal and others v. State of Mysore 1969 CriLJ 826** and **Shokat Ali v. State of Haryana: 2020(2) RCR (Criminal) 339**).

(v) Where the period between issuance and publication of the proclamation and the specified date of hearing is less than thirty days, the accused cannot be declared a proclaimed person/offender and the proclamation has to be issued and published again. (See **Dilbagh Singh v. State of Punjab (P&II): 2015 (8) RCR (criminal) 166** and **Ashok Kumar v. State of Haryana and another : 2013 (4) RCR (Criminal) 550**)

(vi) The Proclamation has to be published in the manner laid down in Section 82(2) of the Cr.P.C. For publication, the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the **Court**-house. The three subclauses (a)-(c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. (See **Pawan Kumar Gupta v. The State of W.B.: 1973 CriLJ 1368**). Where the **Court** so orders a copy of the proclamation has to be additionally published in a daily newspaper circulating in the place in which the accused ordinarily resides. Advisably, proclamation



has to be issued with four copies so that one each of the three copies of the proclamation may be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides, to some conspicuous place of such town or village and to some conspicuous part of the Court-house and report regarding publication may be made on the fourth copy of the proclamation. Additional copy will be required where the proclamation is also required to be published in the newspaper.

*(vii) Statement of the serving officer has to be recorded by the Court as to the date and mode of publication of the proclamation. (See **Birad Dan v. State: 1958 CriLJ 965**).*

*viii) The Court issuing the proclamation has to make a statement in writing in its order that the proclamation was duly published on a specified day in a manner specified in Section 82(2)(i) of the Cr.P.C.. Such statement in writing by the Court is declared to be conclusive evidence that the requirements of Section 82 have been complied with and that the proclamation was published on such day. (See **Birad Dan v. State: 1958 CriLJ 965**).*

*(xi) The conditions specified in Section 82(2) of the 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. (See **Devendra Singh Negi alias Debu v. State of U.P. and another 1994 CriLJ 1783** and **Pal Singh v. The State: 1955 CriLJ 318**)".*

9. A perusal of the impugned order and zimini orders reveals that the procedure prescribed under section 82 Cr.P.C. (section 84 BNSS) was not complied with. Section 82(2) of the Code of Criminal Procedure lays down the procedure for publication of a proclamation. The three conditions, contained in sub-clauses (a) to (c) of Section 82(2)(i), are cumulative in nature. In other words, a valid proclamation can be said to have been made only when all three modes of publication are duly complied with and proved.

10. The object behind issuance of non-bailable warrants or proclamation is only to secure the presence of the accused. In the present case, the



petitioner has voluntarily approached this Court and undertaken to appear before the trial Court regularly. Moreover, the petitioner is ready to settle the matter with the complainant.

11. In view of the foregoing discussion, the petition is allowed. The impugned order dated 11.06.2019 (Annexure P-9), declaring the petitioner proclaimed person, is set aside and he is directed to appear before the trial Court within four weeks from today. Upon his doing so, he shall be released on bail subject to furnishing requisite bail bonds and surety bonds to the satisfaction of the trial Court.

12. Besides, petitioner will also submit an undertaking/affidavit that he will keep appearing during the proceedings of the trial in future and proceedings will not be delayed because of his conduct.

13. It is made clear that in case, petitioner fails to appear before the trial court within the stipulated period, this order shall be deemed to be vacated.

14. The present petition is disposed of accordingly.

02.12.2025
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(RUPINDERJIT CHAHAL)
JUDGE

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