

2026:PHHC:030107



177 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2798-2026
Date of Decision: 24.02.2026

Anand Kumar ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MS. JUSTICE AARADHNA SAWHNEY

Present: Mr. Ram Pal Verma, Advocate
for the petitioner.

Ms. Shweta Nahata, DAG, Haryana.

AARADHNA SAWHNEY, J. (ORAL)

1. Challenge in the present petition is to order dated 18.08.2023 (Annexure P-3) passed by the then JMIC, Ganaur in complaint case No.NACT/97/2021 u/s 138 of the Negotiable Instruments Act (Annexure P-1), vide which the petitioner was declared as 'Proclaimed Person'.

2. Learned counsel for the petitioner contends that a bare perusal of the copies of the interim orders appended along with petition reveals that bailable warrants issued to procure presence of the petitioner were received back served, but he did not turn up. Resultantly, his presence was sought to be procured through warrants of arrest. Perusal of the order dated 18.01.2023 further reveals that on the said day, warrants of arrest to procure presence of the petitioner were received back unexecuted. Fresh warrants of arrest were issued for 12.04.2023, when Ld. JMIC under some mistaken impression directed issuance of fresh proclamation proceedings against accused.

Learned counsel next contends that there was nothing on record that from where an inference could be drawn that despite having received warrants of arrest, petitioner chose deliberately not to appear before the Court. Section 82 Cr.PC specifically provides that there has to be report before the Court that the person against whom warrants have been issued has absconded or has concealed himself, as a consequence of which warrants of arrest could not be executed. Here in the instant case, as pointed above, there was no cogent material available with the learned Magistrate. That apart, no specific order mentioning therein the reasons for initiation of proclamation proceedings, was passed. Further, there is nothing to suggest that on the day publication was effected, the executing constable complied with all the requirements so mentioned under Section 82(2) Cr.PC. Proclamation proceedings initiated by the Ld. JMIC, thus as per learned counsel are not '*in sync*' with Section 82 Cr.P.C. It is with this backdrop that learned counsel prays for setting aside the impugned order dated 18.08.2023 and prays for taking a lenient view in favour of the present petitioner, who undertakes to appear before the trial Court on each and every date of hearing.

3. I have heard learned counsel for the petitioner and have carefully gone through the material available on record.

4. At the outset, it needs to be ascertained as to whether the procedural requirements of Section 82 Cr.P.C. were complied with by learned Magistrate before declaring petitioner '*Proclaimed Person*'.

In this context, before proceeding further, it would be appropriate to refer to a judgment of Coordinate Bench of this Court in **CRM-M-23777-2020** titled ***Sonu V/s. State of Haryana, decided on 06.10.2020***, wherein the essential requirements of Section 82 Cr.P.C. for issuance and publication of proclamation against an absconder and declaring him as proclaimed

person/offender were discussed 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 Vs. State of Delhi : 2008 CrI. 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 Vs. State of Delhi : 2008 CrI. 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 Vs. Emperor : AIR 1943 Patna 366 and Devender Singh Negi Vs.State of U.P. : 1994 CrI 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 and publication of the proclamation. (See Gurappa Gugal and others Vs. State of Mysore : 1969 Cri LJ 826 and Shokat Ali Vs. 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 Vs. State of Punjab (P&H) : 2015 (8) R.C.R. (criminal) 166 and Ashok Kumar Vs. 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 sub-clauses (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 Vs. 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 Vs. 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 Vs. 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 Vs. State of U.P. and another : 1994 CriLJ 1783 and Pal Singh Vs. The State : 1955 CriLJ 318).

In the case in hand a bare perusal of the interim orders (copies of which have been appended along with petition) reveal that notice/bailable warrants issued to procure presence of the petitioner were though received back served but he did not turn up, consequently NBWs were issued, which were received back unexecuted. Presence of the petitioner was sought to be procured through fresh NBWs for 12.04.2023, when following order was passed:-

“Today the case was fixed for recording statement of executing official. Executing official not appeared. Therefore, now let fresh proclamation of accused be issued for 05.07.2023. Executing official is directed to execute the proclamation on or before 02.06.2023 positively. He shall also appear before this court for making statement on 02.06.2023.”

There was no report/any document available with the learned Magistrate that petitioner is intentionally absconded or concealed himself and is deliberately avoiding to appear in the Court despite being in the know-how of the pendency of the case. That apart, as has been rightly pointed out by learned counsel for the petitioner, there is nothing to suggest on the day, the publication was effected, the executing constable complied with all the requirements so mentioned under Section 82(2) Cr.PC.

5. Resultantly, the present petition stands allowed and the impugned order 18.08.2023 is set aside vide which petitioner was declared as 'Proclaimed

Person'. Petitioner is directed to appear before the Court concerned within a period of 15 days from today. In case, he surrenders before the Court concerned within 15 days from today, he be released on furnishing fresh bail bonds/surety bonds to the satisfaction of the trial Court. He is also directed to furnish an undertaking by way of an affidavit that he will appear on each and every date of hearing before the trial Court, unless specifically exempted by the Court. He shall not leave the country without prior permission of the Court. The trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case.

Before parting with this order, it is made abundantly clear that in case the petitioner does not adhere to the aforesaid, the present petition shall be deemed to have been dismissed without any reference to this Court.

24.02.2026
Parveen kumar

(AARADHNA SAWHNEY)
JUDGE

Whether speaking/reasoned :Yes/No
Whether reportable :Yes/No