2026:PHHC:001241

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32177-2025

Sunil Kumar

….Petitioner

versus

State of Haryana and another

….Respondents

Date of decision: January 09, 2026
Date of Uploading: January 12, 2026

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Sukhdev Singh, Advocate for
Mr. Divyam Singh, Advocate for the petitioner.

Ms. Mahima Yashpal, Senior DAG Haryana.

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SUMEET GOEL, J. (ORAL)

Present petition has been filed under Section 528 of the BNSS, 2023, seeking quashing of impugned order dated 12.03.2025 (Annexure P-9) passed by the learned Judicial Magistrate First Class, Karnal, whereby, the petitioner has been declared as proclaimed person under Section 84(1) of the BNSS, in a complaint case No.NACT-2766-2023 titled "Karamjeet Singh versus Sunil Kumar" and a direction has been issued to the concerned SHO to register an FIR under Section 209 of the BNS, 2023 against the petitioner.

2. Learned counsel for the petitioner has iterated that the impugned order, whereby the petitioner has been declared a proclaimed person, is wholly illegal, arbitrary and unsustainable in the eyes of law. Learned counsel has further iterated that the petitioner has been falsely implicated into the present case. Learned counsel has argued that the

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impugned order has been passed mechanically and without complying with the mandatory requirements as envisaged under Section 82 of the Cr. P.C. (Section 84 of the BNSS). Learned counsel has iterated that the petitioner was never duly served with the summons or bailable/non-bailable warrants. Learned counsel has further iterated that purported execution of bailable warrants through family of the petitioner, does not constitute, in law, a valid service. Learned counsel has iterated that while declaring the petitioner as proclaimed person, vide impugned order, no such satisfaction as required under Section 82 of the Cr. P.C. (Section 84 of the BNSS). has been recorded therein. Learned counsel asserts that the impugned order is *ex facie* illegal, arbitrary and unsustainable in the eyes of law and is, therefore, liable to be set-aside. Learned counsel asserts that the impugned order has been passed without properly scrutinizing or verifying the authenticity of the report submitted by the serving constable. Consequently, the order declaring the petitioner as a proclaimed person is unsustainable in the eyes of law and deserves to be quashed.

3. Learned State counsel has filed reply by way of an affidavit dated 07.01.2026, in the Court today, which is taken on record. Raising submissions in tandem with the said reply, learned State counsel opposed the present petition. While refuting the case set up by the petitioner, detailed arguments were advanced on merits, contending that despite issuance of bailable and non-bailable warrants, the petitioner did not appear before the trial Court. Consequently, the petitioner has been rightly declared as proclaimed person, vide impugned order. It has further been pointed out that

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the learned Court below scrupulously adhered to the procedure prescribed under Section 82 of the Code of Criminal Procedure, 1973 (Section 84 of the BNSS), and no infirmity or irregularity is discernible from the record. Learned State counsel has, therefore, contended that the conduct of the petitioner clearly establishes his deliberate defiance of the judicial process and misuse of the concession of bail. Accordingly, dismissal of the instant petition has been prayed for.

4. I have heard the learned counsel for the rival parties and carefully perused the record of the case.

5. The law is well settled that no person can be declared a proclaimed offender/person unless the procedure prescribed under Section 82 of the Code of Criminal Procedure, 1973 is meticulously adhered to. It is trite law that the provisions of Section 82 are mandatory in nature, and any non-compliance thereof vitiates the entire proceedings. In the present case, it has been mentioned in the order dated 03.06.2024 passed by the trial Court that bailable warrants were received back executed through family of the petitioner and, thus, the petitioner, despite, having notice & knowledge regarding pendency of the case, deliberately avoided his service. Further, in the order dated 04.11.2024, it has been mentioned that non-bailable warrants were received back unexecuted; hence, proclamation under Section 82 of the Cr. P.C. was issued against the petitioner. Learned counsel for the petitioner has stated that summons/ bailable and/ or non-bailable warrants were never executed on the petitioner. It has been asserted that no such satisfaction, as required under Section 82 of the Cr. P.C., regarding due execution of

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proclamation against the petitioner has been recorded therein. However, the trial Court vide impugned order dated 21.03.2025 declared the petitioner as proclaimed person which is not shown to have been executed in conformity with Section 82 of the Cr. P.C.

6. This Court finds the course adopted by the Court below is antithesis to the provisions of Section 82 of the Code of Criminal Procedure, 1973. The Court below has committed illegality by issuing the said proclamation under Section 82 of the Criminal Procedure Code, 1973 without compliance of mandatory requirements of law. The learned Court below, while declaring the petitioner as proclaimed person, failed to satisfy itself regarding due execution of proclamation and proceeded in a mechanical manner. Such an order being violative of mandatory provisions of law, cannot be sustained. Section 82 of the Criminal Procedure Code, 1973 reads as under:

> "***82. Proclamation for person absconding.*** *- (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.*
> *(2) The proclamation shall be published as follows: -*
> *(i)(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;*
> *(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;*
> *(c) a copy thereof shall be affixed to some conspicuous part of the court-house;*
> *(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.*
> *(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this Section have been complied with, and that the proclamation was published on such day.*

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> *[(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459, or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.*
> *(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).]*"

7. A Coordinate Bench of this Court while dealing with invocation of the provision of Section 82 of the Code of Criminal Procedure, against an accused in the case of '***Sonu v. State of Haryana, 2021(1) RCR (Criminal) 319',*** held as under:

> "*9. The essential requirements of section 82 of the Cr.P.C., 1973 for issuance and publication of proclamation against an absconder and declaring him as proclaimed person/offender may be summarized 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., 1973. (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 BishundayalMahton 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 and publication of the proclamation. (See Gurappa Gugal and others v. State of Mysore : 1969 CriLJ 826 and Shokat Ali v. State of Haryna : 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&H) : 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., 1973. For publication the proclamation has to be first publicly read in some conspicuous place of the town or village in*

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> *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., 1973 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 Courthouse 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., 1973. 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., 1973 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).*"

8. It is pertinent to mention that it is by now a settled principle of law that before issuing a proclamation under Section 82 Cr. P.C., the Court must record its satisfaction that the accused, against whom the proclamation is sought to be issued, is absconding or concealing himself with intent to evade arrest. This foundational requirement is conspicuously absent in the present case. A perusal of the impugned order dated 21.03.2025 reveals that no such satisfaction was recorded by the Court below, nor was there any material to justify the inference that the petitioner had absconded or was deliberately avoiding arrest.

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9. The provisions of Section 82 of the Code of Criminal Procedure having serious ramifications *qua* the right of the accused concerning his presence in the criminal trial proceedings ought not be and cannot be invoked in casual and cavalier manner. The requirement of recording of satisfaction, that the accused has absconded or is concealing himself so that warrant of his arrest cannot be executed, as embodied in Section 82 of the Code of Criminal Procedure, is to be scrupulously complied with based on relevant material available on record of the case in that regard. Non-adherence to said requirement while declaring the accused as proclaimed person vitiates the proclamation proceedings initiated against the accused.

10. Hence, no useful purpose would be served by keeping the criminal proceedings pending against the petitioner. It is, therefore, an appropriate case for the exercise of powers under Section 528 of BNSS/Section 482 of Cr. P.C. and to bring to an end the criminal proceedings initiated in the light of the complaint case *ibid* against the petitioner.

11. In view of the above findings, in the entirety of facts and circumstances of the present case, the present petition is allowed; and the impugned order dated 12.03.2025 (Annexure P-9) passed by the learned Judicial Magistrate First Class, Karnal, whereby, the petitioner has been declared as proclaimed person under Section 84(1) of the BNSS, in a complaint case No.NACT-2766-2023 titled “Karamjeet Singh versus Sunil Kumar” as well as the other consequential proceedings arising therefrom, are quashed.

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12. Pending application(s), if any, shall also stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

January 09, 2026
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

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