



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

130+302

CRM-M-46853-2024
Date of decision: 20.01.2026

Abhishek Singh
.....Petitioner
Versus
Brijpal Singh
.....Respondent

CORAM: HON'BLE MS. JUSTICE AARADHNA SAWHNEY

Present: Mr. Rohit Kaushik, Advocate for the petitioner.
Mr. Ajay Singh Rana, Advocate for the respondent.

AARADHNA SAWHNEY, J (ORAL)

Challenge in the present petition is to order dated 03.10.2023 passed by the learned JMIC, Ambala in Criminal complaint No.COMA/1245/2018 titled “Brij Pal Singh vs. Green Life Infrastructure Development Corporation and Anr”, U/s 138 of NI Act, vide which the petitioner has been declared as proclaimed person.

2. Relevant facts emerging from the documents on record be noticed hereinbelow:

Criminal complaint No.COMA/1245/2018 titled “Brij Pal Singh vs. Green Life Infrastructure Development Corporation and Anr” was filed on 12.06.2018. After the preliminary evidence was led in the aforesaid criminal complaint, petitioner was summoned as an accused to face trial under Section 138 of NI Act by the then learned JMIC, Ambala vide order dated 12.09.2018.

Perusal of copies of interim orders appended along with petition reveal that for several occasions, requisite process fee was not deposited by the complainant as a consequence of which notice could not be issued to the petitioner accused. After noticing non-compliance on the part of the complainant,



cost was also imposed upon him by the learned trial Magistrate. A perusal of order dated 26.04.2023 further goes to show that notice issued to the petitioner-accused was received back unserved with the report that no person is residing at the given address. Thereafter, complainant furnished the fresh address on which bailable warrants were issued, which were also received back unserved.

3. Brief submission of learned counsel for the petitioner-accused is that the petitioner was not aware about the pendency of the complaint, no notice was ever received by him. In fact, he was not residing at the address so mentioned in the complaint as the said property had already been attached. Even at the other address, no notice/bailable warrants/NBWs were ever served. There is no order of the learned Magistrate indicating that despite receipt of warrants, petitioner deliberately chose not to appear. It is in the light of submissions advanced hereinabove that the learned counsel prays that the impugned order is not '*in sync*' with the procedural requirements of Section 82 Cr.P.C and thus deserves to be set aside, more so, when the petitioner is willing to immediately surrender before the court concerned.

4. Learned counsel for the respondent-complainant is also present in court and has raised no objection if the impugned order is set aside.

5. 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 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 Vs. 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 Vs. Emperor : AIR 1943 Patna 366 and Devender Singh Negi Vs. 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 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).

6. It is, clear that the Court which issues proclamation under Section 82 Cr.P.C., must record specific reason/satisfaction that the accused against whom the proceedings are being initiated has absconded or concealed himself to evade the arrest. As noted hereinabove, even though warrants of arrest issued against petitioner were received back unexecuted, learned trial Court presumed (in the absence of any cogent document) that service has been effected upon petitioner, who is deliberately avoiding to appear in the Court.

As per the facts of the case in hand, admittedly, there is no material on record indicating that accused had been served and that he deliberately chose not to appear. In the light of the same, initiation of proclamation proceedings against the petitioner-accused were not called for, when there is nothing on record to indicate that despite being aware of process having been issued against him, petitioner chose not to appear.

Observation of the learned trial Court vide order dated 21.07.2023 that the petitioner was aware of the proceedings and has deliberately chosen not to

appear does not appear to be well founded. Thus when viewed in totality, it is



clear that the procedural requirement of Section 82 Cr.P.C has not been complied with in letter and spirit.

Resultantly, in view of the discussion made hereinabove, the impugned order dated 03.10.2023, whereby the petitioner was declared Proclaimed Offender, is set aside. Accordingly, present petition stands allowed.

7. Learned counsel for the complainant-respondent is present in Court and submits that he has no objection if the impugned order is set aside.

8. Heard.

9. In view of the facts mentioned hereinabove, petitioner is directed to surrender before the Court concerned within a period of one week. In case, he surrenders before the court concerned within one week, he be released on the same bail/surety bonds as had been furnished by him at the time of granting bail. 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.

11. The present petition is accordingly allowed.

12. 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.

13. All the pending application(s), if any, stand disposed of.

20.01.2026
manoj

(AARADHNA SAWHNEY)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No