



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.63022 of 2025 (O&M)
Date of Decision: 15.01.2026

Rajeev Kamboj

.....Petitioner

Versus

Shiv Kumar and another

..... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA PARTAP SINGH

Present: Mr. Rakesh Gupta, Advocate for the petitioner.

Mr. Eklavya Darshi, DAG, Punjab.

SURYA PARTAP SINGH, J. (Oral):

The order dated 04.11.2023 (Annexure P-11), hereinafter being referred to as 'impugned order', passed by the Court of learned Judicial Magistrate Ist Class, Jalandhar, hereinafter being referred to as "trial Court", is under challenge in the present petition filed under Section 528 of the 'Bharatiya Nagarik Suraksha Sanhita 2023', hereinafter referred to as "BNSS" only.

2. By virtue of abovementioned order, the learned trial Court while holding a trial in a complaint case i.e. COMI-484-2016, for the commission of offence punishable under Section 500 of Indian Penal Code, hereinafter being referred to as 'IPC', has declared the petitioner to be a proclaimed person as he never appeared before the learned trial Court.

3. In nut-shell, the facts emerging from record are that the petitioner was facing a trial for the commission of offence punishable under Section 500



IPC and in the abovementioned case, an application was moved by the complainant for service of the petitioner through publication and on 31.10.2022 petitioner was ordered to be summoned through publication in the newspaper 'Times of India' for 02.12.2022. On 07.06.2023 publication was effected and the petitioner was ordered to be summoned through bailable warrants. Thereafter, his non-bailable warrants were issued which remained unexecuted. In the backdrop of above mentioned developments, vide order dated 11.08.2023 the proclamation was ordered to be issued against the petitioner for 25.09.2023. However on the said date the learned trial Court issued fresh proclamation for 04.11.2023., which was duly effected on 01.10.2023. Consequently, statement of serving Constable was recorded by the Court on 02.10.2023. Thereafter, by virtue of impugned order, the petitioner was declared a proclaimed offender.

4. Notice of motion.

5. Since advance notice has already been served, Mr. Eklavya Darshi, DAG, Punjab, appears on behalf of respondent-State. Hence, service of notice upon the State is hereby dispensed with.

6. Heard.

7. It has been contended on behalf of petitioner that the learned trial Court has committed an error when without following the due process, it declared the petitioner to be a proclaimed person. It has been further contended by learned counsel for the petitioner that in the present case, proclamation issued against the petitioner is defective in view of the fact that affixation of proclamation was not as per prescribed procedure, as the Executing Constable



did not publicly read the contents of abovementioned proclamation.

8. In addition to above, it has been further alleged by the petitioner that because of defective procedure adopted by the learned trial Court, in declaring the petitioner to be a proclaimed offender, the impugned order is liable to be set aside.

9. Per contra, the learned State Counsel has argued that the petitioner is a person, who never appeared before the learned trial Court after institution of the complaint, and thereafter he continued to abscond. The learned State Counsel has argued that in the present case, the petitioner is a person who right from the very beginning was aware of the pendency of criminal proceedings against him and took the law in his own hands. As per learned State Counsel, since the petitioner himself opted not to appear before the Court and remained absent for long, now he cannot draw the benefit of any technical defect, if any, which might have taken place, inadvertently in declaring the petitioner to be a proclaimed offender.

10. The record has been perused carefully.

11. A perusal of the record shows that the petitioner has placed on record the copy of statement of serving Constable recorded by the learned trial Court, before passing the order for declaring the petitioner to be a proclaimed offender. The statement of serving Constable dated 01.10.2023 reads as under:-

“I was entrusted the proclamation form for issuing proclamation against accused Rajiv Kamboj and copy of the proclamation form of said accused is Ex.P1 and my report dated 01.10.2023. I had executed the proclamation in the area



of residence of accused and had affixed a notice at his residence and another copy of notice were affixed on the notice board of the court and it was brought into the knowledge of the resident of the locality that in case aforesaid accused appears he should appear in the Court.”

12. A perusal of the record further shows:-

(a) that on the day when cognizance against the petitioner was taken, till the date of impugned order the petitioner was not in the country and in his absence the service of summons was effected on an address where the petitioner was not residing; and

(b) that as per mandatory provision contained in Section 82 Cr.P.C. the contents of proclamation were not read publicly by the serving constable.

13. A bare perusal of the abovementioned statement of the Executing Constable shows that the said Executing Constable did not read the notice publicly i.e. at some conspicuous place of the town or village in which the petitioner was ordinarily residing. The order dated 04.11.2023 shows that on the basis of abovementioned statement of the serving Constable, which was not in conformity with the statute, the petitioner has been declared a proclaimed person.

14. With regard to the above-mentioned procedure adopted by the Executing Constable, it is relevant to mention here that Section 82(2) of Cr.P.C. lays down that following steps are necessary to be taken before



declaring a person to be a proclaimed person:-

“(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.”

15. With regard to mandatory nature of abovementioned procedure, it has been repeatedly observed by this Court, that the compliance of abovementioned provisions of Section 82(2) of Cr.P.C. is mandatory in nature. It has also been held that in case the above process is not followed in letter and spirit, the impugned order declaring a person to be a proclaimed offender/proclaimed person is defective.

16. In this regard in the case of ‘Tirlok Chand Vs. State of Haryana 2023(2) Law Herald 1545’, this High Court observed that if a proclamation is issued for appearance of an accused on a fixed date before the Court, and on that date he is not declared proclaimed person, for subsequent date fresh proclamation should be issued. Similar view has been taken in the cases of ‘Jarnail Singh v. State of Punjab & Another (CRM-M-27944 of 2024, decided



on 04.09.2024)’ and ‘Gagandeep Singh v. State of Punjab (CRM-M-50704-2024, decided on 28.11.2024)’.

17. In addition to above, it is also relevant to mention here that the statement of Executing Constable nowhere depicts that the proclamation was read at a public place in the vicinity where the petitioner ordinarily resides as prescribed under Section 82(2)(i)(b) & (c) of CrPC. Thus, the impugned order declaring the abovesaid person to be a proclaimed person/proclaimed offender is defective and not sustainable in the eyes of law. Similar view has been taken by this High Court in the cases of ‘Pal Singh Santa Singh v. State AIR 1955 Punjab 18 and Tajinder Singh v. State of Punjab’ (CRM-M-21736-2024, decided on 07.05.2024). On this account also, the abovementioned proclamation seems to be defective.

18. Taking into consideration the cumulative effect of the abovementioned factors, as there was a defect in affixation of proclamation, i.e. non-reading of summons in public place, the order dated 04.11.2023 passed by the learned trial Court is hereby held to be perverse, defective and unsustainable in the eyes of law. Resultantly, the present petition is hereby allowed and the impugned order dated 04.11.2023 passed by the learned trial Court is hereby quashed.

(SURYA PARTAP SINGH)
JUDGE

15.01.2026
Manoj Bhutani

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