

2025:PHHC:095631



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM M-22580-2025

Date of Decision:15.07.2025

Rajinder Singh

...Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Jatinder Kumar Kansal, Advocate for
Mr. Abhinav Gupta, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Addl. A.G., Punjab.

Mr. Akinchan Aggarwal, advocate with
Ms. Arunima, Advocate for
Mr. Akash Yadav, Advocate
for the complainant.

N.S.SHEKHAWAT, J.

1. The petitioner has filed the present petition under Section 528 of the BNSS with a prayer to quash the impugned order dated 31.07.2019 (Annexure P-5) passed by the Court of Judicial Magistrate 1st Class, Phul, whereby, the petitioner was declared as proclaimed person, in a case arising out of the FIR No. 160 dated 25.10.2016 under Sections 420, 494 and 120-B registered at Police Station Dayalpura, District Bathinda.

2. Learned counsel for the petitioner contends that the FIR in the present case was registered on the basis of the complaint moved by Nirmal Singh Dhillon to the SSP, Bathinda. In fact, the petitioner was falsely involved in the present case and he had no concern with the allegations levelled by the complainant. In fact, the petitioner is the cousin of the complainant and even the complainant was well aware of the fact that the petitioner is now a citizen of Canada and had not visited India after the year 2013. Learned counsel for the petitioner has also placed reliance on the copy of the passport (Annexure P-2) of the petitioner in this regard. Learned counsel further contends that in fact earlier the complainant had filed a complaint bearing CIS No. COMI 94/2014 titled as **“Nirmal Singh Vs. Jaspal Kaur”**, and in the said complaint, no allegations were levelled against the petitioner. Moreover, the father of the petitioner had appeared as a prosecution witness in the said complaint. Later on, when the complainant did not succeed in getting his money from the accused, he got the present FIR registered in the year 2016. Learned counsel further contends that in the present case also, the *challan* was presented after investigation and Bagh Singh, father of the petitioner and his two co-accused were acquitted by the trial Court on 18.03.2023. Now, with the intervention of the respectables, the matter has also been compromised between the parties. Even, the complainant has sworn an affidavit (Annexure P-6) and stated that he

had no objection in case the present FIR is ordered to be quashed by this Court on the basis of the compromise.

3. Learned counsel further contends that the petitioner had left India in the year 2013, whereas the FIR in the present case was registered on 25.10.2016, i.e., three years thereafter. Even, the complainant and the police were well aware of the fact that the petitioner was now a citizen of Canada and had not returned India after 2013, still no steps were taken to serve him notice in Canada. Even, no summons were ever served through Indian Embassy. Learned counsel further contends that the mandatory provisions as enshrined under Section 82 of the Code of Criminal Procedure were not followed and the petition deserves to be allowed by this Court.

4. An affidavit on behalf of respondent No. 1-State and a short reply on behalf of respondent No.2 have been filed and the same are taken on record.

5. Learned State counsel submits that as per the report of the Foreigners Regional Registration Officer, Bureau of Immigration MHA, Government of India, the petitioner had arrived in India on 19.02.2013 and he left India on 01.04.2013. After that he did not return to India.

6. Even, learned counsel for respondent No. 2 could not dispute the fact that the petitioner had left India in the year 2013 and did not return thereafter.

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

8. In the present case, the primary contention raised on behalf of the petitioner is that the petitioner was now a citizen of Canada and had not returned to India after 2013 and he has been declared as proclaimed person, without following the mandatory provisions of Section 82 Cr.P.C. Section 82 Cr.P.C., which provides for the proclamation of the persons absconding 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.”

However, by way of Section 12 of Act No.25 of 2005, subsections (4) and (5) were also inserted in Section 82 Cr.P.C. w.e.f. 23.06.2006 vide notification No.S.O.923(E) dated 21.06.2006, which reads as under:

“[(4) Where a proclamation published under subsection (1) is in respect of a person accused of an offence punishable under section 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).]”

The above said provisions clearly lay down that the copy of the proclamation has to be publicly read in some conspicuous place of the town or the village in which the concerned person ordinarily resides. It has to be affixed to some conspicuous part of the house or

homestead in which the said person ordinarily resides or to some conspicuous place of such town or village. In the present case, the petitioner was now a citizen of Canada and had not come to India after registration of the FIR in the year 2016. Consequently, it is an admitted fact that the proclamation was never published in the manner as provided by Section 82 Cr.P.C. Even, the respondents have admitted that the petitioner had not returned to India after 01.04.2013 and there is nothing on record to suggest that any effort was made to publish the proclamation in any manner whatsoever in Canada.

9. In ***“Rajiv Mehta v. State of Punjab”***, reported as ***2015(4) R.C.R.(Criminal) 340***, it has been held by this Court as under:-

“13. It has again gone undisputed on record that the petitioners were staying abroad when the impugned FIR was registered against them. Despite knowing fully well that the accused were not residing in India, complainant respondent No.2 gave Indian addresses of the petitioners. Whenever any notice was issued to the petitioners, it was issued at their Indian address and they were never informed at their residential addresses of England, because of which they came to be declared proclaimed offenders by the learned Magistrate, by passing the impugned order dated 11.3.2011 (Annexure P-4).

After making the above observations, the proclamation proceedings were ordered to be quashed.

10. Further, similar view has been taken by the various Courts in the matters of *“Nitin Jindal v. State of Punjab and another”*, (CRM-M-50216 of 2022, decided on 14.11.2022); *“Naresh Kumar v. State of Haryana”* (CRM-M-17413-2020, decided on 18.04.2022); *“Gurbir Singh Mundi v. State of Punjab and another”*, (CRM-M-49283-2021, decided on 16.12.2021); *“Harvinder Singh v. State of Haryana and another”*, 2021(1) R.C.R. (Criminal) 493; *“Narinder Singh and another v. State of Punjab and another”*, 2019(1) R.C.R.(Criminal) 741; *“Deepak Jagpal and another v. State of Punjab and another”* (CRM-M-3465 of 2017, decided on 15.05.2017); and *“Mehar Singh and Anr. v. State of Punjab”*, 2010(2) R.C.R. (Criminal) 167”.

11. In view of the above discussion, the petition is allowed. The impugned order dated 31.07.2019 (Annexure P-5) passed by the Court of Judicial Magistrate 1st Class, Phul and all the subsequent proceedings arising therefrom, are ordered to be quashed qua the petitioner only.

15.07.2025

amit rana

(N.S.SHEKHAWAT)

JUDGE

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