



CRM-M-47603-2025 (O&M) 1

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCRM-M-47603-2025 (O&M)
Date of Decision: 04.09.2025

AJAY KUMAR Petitioner

Versus

STATE OF UT CHANDIGARH AND ANOTHER Respondents

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHORPresent : Ms. Pratibha Yadav, Advocate
for the petitioner.Mr. Virat Rana, Advocate
for the A.P.P, U.T. Chandigarh.

YASHVIR SINGH RATHOR, J. (Oral)

1. Present petition has been instituted under Section 528 of BNNS, 2023 for quashing order dated 20.05.2025 (Annexure P-9) passed by learned Judicial Magistrate 1st Class, Chandigarh whereby the petitioner has been declared as a proclaimed person in case bearing NACT-4635-2022 titled as 'Manoj Kumar Sharma Vs. Ajay Kumar' along with other consequential proceedings arising from the same.
2. I have heard the learned counsel for the petitioner as well as the learned State counsel and have gone through the material collected by the police during investigation.
3. Learned counsel for the petitioner argued that petitioner has been wrongly declared as a proclaimed person. He never received any summons/warrants from the Trial Court. The bailable warrants issued



against him remained unexecuted and learned Trial Court issued proclamation against the petitioner under Section 82 Cr.P.C. and ultimately, he was declared a proclaimed person without following proper procedure. Learned counsel contended that as per order dated 04.12.2024,ailable warrant issued against the petitioner was received back unserved and learned counsel for the complainant made a statement that accused is aware of the proceedings and is intentionally concealing himself and avoiding his service. Thereafter, learned Court observed that presence of accused cannot be secured throughailable warrants and initiated the proceedings under Section 84 of BNSS, 2023 and proclamation was ordered to be issued for 22.01.2025 and executing constable was directed to appear for making his statement regarding publication of proclamation on 22.12.2024. Learned counsel for the petitioner next contended that instead of publishing the proclamation before 22.12.2024, the executing constable effected the proclamation on 05.01.2025 as is apparent from the report (Annexure P-6) and thereafter, he made a statement before Magistrate (Annexure P-7) which was recorded on 22.01.2025. Learned counsel next contended that learned Trial Magistrate observed that period of 30 days has not lapsed from the date of proclamation and case was adjourned to 05.02.2025 for awaiting of presence of accused on which date, petitioner was declared a proclaimed person. Learned counsel for the petitioner further contended that no proclamation had been issued for 05.02.2025 and since proclamation issued for 22.01.2025 had not been effected 30 days prior to the date fixed for appearance of the accused, the case could not have been adjourned for 05.02.2025 for presence of accused and rather, fresh proclamation should have been issued for



another date beyond 30 days and accused has, thus, been wrongly declared a proclaimed person vide order 05.02.2025 and learned counsel prayed that impugned order be set aside as mandatory provisions of Section 84 of BNSS, 2023 have not been followed.

4. On the other hand, learned State counsel argued that petitioner could not be served when his non-bailable warrants were issued and thereafter, proclamation under Section 82 Cr.P.C was ordered to be issued and he was declared a proclaimed offender. Learned State counsel contended that impugned order is well reasoned and speaking and does not call for interference and petition deserves to be dismissed.

5. Before proceeding further, orders dated 04.12.2024, 22.01.2025 and 05.02.2025 are being reproduced as under:-

“Order dated 04.12.2024

On dated 22.08.2024 bailable warrants were received back unexecuted. Learned counsel for the complainant stated at bar that the accused is well aware about the proceedings against him and he is intentionally concealing himself and avoiding the service. The complainant is known to the address of accused which is mentioned in the complaint and requested for further proceedings. The Court is satisfied with the statement therefore the presence of accused cannot be procured through bailable warrants hence the proceedings under Section 84 of BNSS 2023 (Section 82 of Cr.P.C.) be initiated against the accused. Accordingly proclamation u/s 84 BNSS requiring the accused person to appear in person be issued for 22.01.2025 The executing constable is directed to appear on 22.12.2024 for making his statement regarding proclamation of the accused. It is directed that while effecting the publication, the executing constable shall effect it as per the procedure mentioned in sub-Clause (a,b and c)



of Section 84(2)(i) of BNSS the proclamation shall be published as follows:-

(a) It shall be publicly read in some conspicuous place of the town or village in which above named accused ordinarily resides:

(b) It shall be affixed to some conspicuous part of house or homestead in which the said accused 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.

Proclamation be got executed through SHO concerned and he is directed to appear in person on the date fixed if proclamation is not executed. Complainant is also directed to furnish the list of property of accused.

Order dated 22.01.2025

Proclamation issued against accused received back duly executed. However, none has appeared on behalf of accused. Statement of Serving Constable has been recorded, wherein he has proved proclamation Ex.PA and report as Ex.PB. Since, Period of 30 days has not been elapsed. As such, to come up on 05.02.2025 for awaiting appearance of accused.

Order dated 05.02.2025

File taken up today as the learned undersigned is availing one day casual leave for 05.02.2025. Now, to come up on 20.05.2025 for the purpose and intent already fixed. Parties/counsels are informed accordingly.”

6. A perusal of the order dated 04.12.2024 shows that proclamation was ordered to be issued for 22.01.2025 and publication was to be effected before 22.12.2024 and executing constable was directed to appear on 22.12.2024 for making his statement regarding



effecting of proclamation against the accused. However, proclamation was not effected/published before 22.12.2024. Rather, the same was published on 05.01.2025, as per report (Annexure P-6) and statement recorded before Judicial Magistrate 1st Class, Chandigarh (Annexure P-7). Thereafter, the order dated 22.01.2025 was passed and it was observed that proclamation has been received back but period of 30 days has not lapsed and case was adjourned to 05.02.2025 for presence of the accused and on 05.02.2025, case was adjourned and the petitioner was declared a proclaimed person vide impugned order dated 20.05.2025 (Annexure P-9). However, once proclamation had not been published 30 days prior to the date fixed for presence of accused on 22.01.2025, the Trial Magistrate should have adjourned the case for some other day and issued fresh proclamation for a period beyond 30 days and it could not have extended the time for appearance of accused by simply adjourning the case from 22.01.2025, 15.02.2025 and thereafter to 20.05.2025. Infact, no proclamation had been issued against the accused for 20.05.2025 on which date he was declared a proclaimed person. A Coordinate Bench of this Court while deciding CRM-M-41656-2023 titled *Pardeep Kumar Vs. State of Haryana* vide judgment dated 23.8.2023 has held that once proclamation is issued, it must be set forth in the proclamation as to where and when the accused must present himself. A designated location and time must be stipulated and importantly, the specific date and time for appearance should not be less than 30 days from the date of publication of proclamation which is missing in the present case.

7. Besides this, the report made by executing constable which



has been annexed as (Annexure P-6) has been perused in which the executing constable has reported that he has pasted a copy of proclamation on the given address and he made the following report (Annexure P-6):-

“it is requested that I have pasted copy of proclamation on the given address, one of the local bus stand, one on the notice board of the Hon’ble Court. Original copy is presented in this Hon’ble Court.

Report is presented.”

A perusal of the aforesaid report shows that the proclamation had not been read publicly in some conspicuous place of the town or village in which the accused ordinarily resided. A Coordinate Bench of this Court in 2022(1) Law Herald 219 titled **‘Rahul Dureja and another Vs. State of Punjab’** has held that if there is non-compliance of mandatory provisions of Section 82(2)(i)(a) of Cr.P.C. and proclamation is not read publicly in same conspicuous place of the town or village where the accused ordinarily resides, the accused is deprived of the knowledge of proclamation and on this score, the proclamation notice is liable to be quashed. In 2021(1) RCR (Criminal) 493 titled **‘Harvinder Singh Vs. State of Haryana and another’**, it was further held that if proclamation is not read publicly in the village where accused resided, it is not an irregularity but it renders proclamation and subsequent proceedings as nullity. On this score also, the proceedings initiated under Section 82 Cr.P.C. against the petitioner are invalid. As such, proper procedure has not been followed while declaring petitioner a proclaimed person and the impugned order, thus, suffers from material irregularities



and illegalities and the same is, thus, not sustainable and is liable to be set aside.

7. As a result of the aforesaid discussion, the present petition is accepted and the impugned order dated 20.05.2025 (Annexure P-9), vide which, the petitioner was declared proclaimed person is set aside.

8. Pending misc. application (s), if any, shall also stand disposed of.

(YASHVIR SINGH RATHOR)
JUDGE

04.09.2025

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| Whether speaking/reasoned | Yes/No |
| Whether Reportable | Yes/No |