



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

**CRM-M-22919-2025  
Date of decision: 30.04.2025**

**SUKHWINDER SINGH**

**...PETITIONER**

**V/S**

**STATE OF PUNJAB AND ANOTHER**

**...RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present:     Mr. Amandeep Saini, Advocate  
                  for the petitioner.

                  Mr. Narinder Saini, Advocate  
                  for respondent No.2.

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**HARPREET SINGH BRAR, J. (ORAL)**

1.           This is the first petition filed under Section 528 Bharatiya  
Nagarik Suraksha Sanhita (BNSS), 2023 seeking quashing of impugned order  
dated 27.02.2023 passed by learned Judicial Magistrate Ist Class, Kharar  
(Annexure P-10), whereby the petitioner was declared as proclaimed  
absconder in case filed under Section 138 of Negotiable Instruments Act, 1881  
bearing No.NACT-8 of 2020.

2.           Learned counsel for the petitioner *inter alia* contends that the  
petitioner was declared as proclaimed absconder on account of non-  
appearance of the petitioner before the learned trial Court, which was not  
deliberate. It is further submitted that a settlement has been arrived at between  
the petitioner and the complainant, whereby, the petitioner has paid the entire  
cheque amount to the complainant. Pursuant thereto, the complainant has  
withdrawn the case pending before the learned trial Court. Moreover,  
proclamation was issued against the petitioner without following the drill of  
Section 82 Cr.P.C. and non-compliance of the mandatory provisions vitiates



the entire proceedings, which suffers from incurable illegality as he was never served and the impugned order is liable to be set aside.

3. Notice of motion.

4. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in the Court, accepts notice on behalf of respondent-State and supports the order passed by the learned trial Court by contending that the petitioner did not put in appearance before the trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure his presence. However, he could not controvert the fact that the drill of Section 82 Cr.P.C. was not followed before declaring the petitioner as proclaimed absconder and the fact that compromise has been effected between the parties.

5. I have heard learned counsel for the parties and perused the record of the case with their able assistance, the matter is taken up for final disposal.

6. While the scheme of criminal justice system necessitates curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

7. A perusal of the impugned order reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioner has absconded or is concealing himself. This Court in the judgment passed in ***Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406;***



**2023 (2) Law Herald 1506** has held that the Court is first required to record its satisfaction before issuance of process under Section 82 of Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in **Sonu Vs. State of Haryana 2021 (1) RCR (CrL) 319**, it has been held that the conditions specified in Section 82 (2) 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.

8. The sole purpose of issuance of non-bailable warrants or issuance of proclamation is to secure presence of the accused before the trial Court. The petitioner in the present case has himself come forward. Moreover, the complaint (*supra*) has already been withdrawn on the basis of compromise.

9. In view of the aforesaid facts and circumstances and in view of the ratio of law laid down in **Major Singh @ Major (supra)**, the present petition is allowed and the impugned order dated 27.02.2023 (Annexure P-10), vide which, the petitioner was declared as proclaimed absconder is quashed.

April 30, 2025  
*manisha*

(HARPREET SINGH BRAR)  
JUDGE

- |      |                           |        |
|------|---------------------------|--------|
| (i)  | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable        | Yes/No |