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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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DECIDED ON: 28.05.2025

SATYANDER KUMAR ALIAS SATYENDER KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH.

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

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

**SANJAY VASHISTH, J (ORAL)**

1. By way of instant petition, petitioner – Satyander Kumar @ Satyender Kumar, aged 48 years, has sought quashing of the order dated 10.04.2023 (Annexure P-3) passed by learned Judicial Magistrate 1<sup>st</sup> Class, Hisar, in a complaint case u/s 138 of Negotiable Instruments Act, bearing complaint No.24 dated 05.01.2022, vide which petitioner was declared proclaimed person (PO) and all the consequential proceedings arising thereof, including FIR No.922 dated 30.08.2023, u/s 174-A IPC, registered at P.S. HTM, District Hisar.

2. To strengthen the plea that impugned order by which the petitioner was declared Proclaimed person is illegal and erroneous, counsel for the petitioner submits that actually, the petitioner was not residing at the address given in complaint, because since July, 2020, he had already shifted in District Panchkula from Hisar.



Complaint dated 05.01.2022, filed under Section 138 of the Negotiable Instruments Act, contains the address of the accused (petitioner herein), which is mentioned as under:-

*“Satyender s/o Sh. Om Parkash (Ex Sarpanch. Chandan Nagar, Village Bir Hisar), now resident of Gagandeep Colony, Near Chandan Nagar, Balsamand Road, Hisar Tehsil and District Hisar”*

3. The above contention is detailed in paragraph No.7 of the present petition. It is further submitted that no summons, notice, bailable warrants, or non-bailable warrants were ever served upon the petitioner at any address located in District Panchkula.

Elaborating on the sequence of events regarding the issuance of notices to the accused, learned counsel for the petitioner points out that initial notice was issued on 07.03.2022 for appearance on 16.05.2022. However, the notice could not be served as it was allegedly refused by the petitioner's son. Consequently, bailable warrants were issued on 16.05.2022, and it was thereafter projected that the said warrants were served through the petitioner's wife. It is submitted that this was factually incorrect, as the wife of the petitioner had been residing in Panchkula since July 2020.

4. Vide order dated 09.09.2022, non-bailable warrants were issued against the petitioner. However, the warrants were received back unexecuted with the report stating that petitioner had gone out of station. In this regard, on 09.03.2023, statement of SI Chhotu Ram was recorded, wherein he stated that proclamation against the petitioner had been duly



published on 07.01.2023. Accordingly, proclamation under Section 82 Cr.P.C. was issued for 10.04.2023.

Subsequently, on 10.04.2023, petitioner was declared a proclaimed person. Following this, a copy of the proclamation order was forwarded to the concerned Station House Officer (SHO) with a direction to register a case against the petitioner under Section 174-A of the Indian Penal Code.

5. Counsel for the petitioner submits that it cannot be concluded with certainty that notice upon the accused had actually been effected or proceedings were in notice, before declaring the petitioner as Proclaimed person because;

- i) No other statement except of SI Chhotu Ram was recorded to confirm that he had actually published the proclamation on 07.01.2023.*
- ii) Even order dated 16.05.2022 and 09.09.2022, nowhere concludes or records satisfaction of effecting of actual service upon the accused.*
- iii) Even while ordering for proclamation u/s 82 Cr.P.C., it is noticed that non-bailable warrants issued against the accused received back unexecuted with the report that he had gone out of station.*

In other words, without execution of non-bailable warrants proclamation has been issued.

6. Another important question involved pertains to the actual date of publication of the proclamation and whether the same was publicly read out at a conspicuous place in the locality where the accused ordinarily resides. It is submitted that merely recording satisfaction on the basis of assumptions, without strict compliance with the procedural requirements under the law, is not sufficient or appropriate for declaring the accused as a 'proclaimed person'.



7. Relying upon the decision of this Court passed in CRM-M-41656-2023, titled as “*Pardeep Kumar Vs. State of Punjab and another*”, counsel for the petitioner relies upon certain guidelines requiring for issuance of proclamation under Section 82 Cr.P.C.

8. It is submitted that, as per the applicable guidelines, no FIR under Section 174-A of the IPC could have been registered without the trial Court first moving a formal complaint. Furthermore, learned counsel for the petitioner submits that petitioner has been residing in District Panchkula, since July 2020, and has been regularly appearing in the proceedings under Section 138 of the Negotiable Instruments Act. This fact is evident from the zimni orders appended with the present petition.

9. It is also pointed out that in the proceedings initiated under Section 174-A IPC, petitioner has already joined the investigation and is participating in the proceedings after being granted anticipatory bail by the competent Court. Thus, in light of the above submissions and factual background, it is prayed that the order dated 10.04.2023, whereby the petitioner was declared a proclaimed person, along with the consequential FIR impugned herein, be quashed.

10. On the other hand, learned State Counsel submits that service upon the petitioner had been duly effected. In support of this contention, he refers to the report indicating that, on one occasion, notice was received by the petitioner's son, and on another,ailable warrants had come to the knowledge of the petitioner's wife. However, learned State Counsel is unable to substantiate these submissions with any documentary evidence.



It is further submitted that the judgment relied upon by the petitioner is not applicable to the facts of the present case. Additionally, it is argued that since the petitioner has now started appearing in the proceedings in both the cases, such conduct would amount to acceptance of the proclamation order, which cannot be challenged by him at this belated stage. Accordingly, learned State Counsel prays for dismissal of the present petition.

11. After hearing counsel for the respective parties and perusing the record, this Court finds that learned Magistrate did not record any satisfaction indicating that there were substantial reasons to believe that proper service had been effected upon the petitioner. Notably, the petitioner, who had already been residing in Panchkula, eventually joined the proceedings. *Prima facie*, this suggests that upon becoming aware of both sets of proceedings, i.e. proceedings under Section 138 of the Negotiable Instruments Act and under Section 174-A IPC., he voluntarily came forward and submitted himself to the legal process before the respective Courts.

Furthermore, no material has been placed on record by learned State Counsel to disprove the petitioner's claim or to establish that he was residing at the address mentioned in the complaint during the year 2022.

12. This Court has carefully considered the judgments and orders relied upon by learned counsel for the petitioner in support of his submissions and finds itself fully satisfied that the service in question cannot be deemed to be effective and appropriate for the purpose of



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declaring the petitioner a proclaimed person. Apart from the statement of SI Chhotu Ram, no other supporting statement or material was recorded or presented before the Court to justify such a declaration.

Given the existence of substantial reasons, this Court finds it appropriate to quash the proclamation order dated 10.04.2023 and the consequential registration of the FIR under Section 174-A IPC, and thereby allow the petitioner's plea to effectively pursue and defend the main proceedings under Section 138 of the Negotiable Instruments Act, in which he has already appeared and is participating.

13. Accordingly, present petition is **allowed**, and order dated 10.04.2023, whereby the petitioner was declared proclaimed person, along with all consequential proceedings arising thereof, including FIR No.922 dated 30.08.2023, u/s 174-A IPC, registered at P.S. HTM, District Hisar, is hereby quashed.

(SANJAY VASHISTH)  
JUDGE

28.05.2025

*Lavisha**Whether speaking/reasoned* ✓ *Yes/No**Whether reportable* ✓ *Yes/No*