



235-2

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

CRM-M-20799-2022

Reserved on 09.09.2025

Pronounced on 12.09.2025

Jaswinder Singh

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MS. JUSTICE SHALINI SINGH NAGPAL

Present: Mr. Nagar Singh, Advocate
for the petitioner.

Mr. Hardeep Singh Wadhwa, DAG Punjab.

SHALINI SINGH NAGPAL J.

1. Jaswinder Singh, accused in criminal case arising out of FIR No.8 dated 26.01.2017 under Section 498-A Indian Penal Code, Police Station Ahmedgarh, District Sangrur, has filed this petition under Section 482 Cr.P.C. for quashing order dated 02.11.2021 of learned JMJC, Malerkotla, declaring him "proclaimed offender".

2. Learned counsel for the petitioner, *inter alia*, submits that marriage of petitioner was solemnized on 21.01.2014 as per Sikh rites, in India. Petitioner who was a citizen of America, returned to USA soon after marriage. His wife also joined him in America but could live with him only for one month, whereafter she started residing separately. He further submits that marriage of petitioner with complainant's daughter was declared nullity by Superior Court of California County of Contra Costa on 04.11.2015. Yet, complainant lodged a false FIR against petitioner under Section 498-A, behind his back. Petitioner was never arrested in the case, no notice was ever served on him nor warrants were executed. Yet, he was illegally declared



proclaimed offender vide order dated 02.11.2021 of learned JMIC, Malerkotla without following proper procedure under Section 82 Cr.P.C. and without following due process of law. It was argued that since petitioner was residing abroad, the Court was required to ensure his personal service through Embassy and the proclamation under Section 82 Cr.P.C. against him was liable to be quashed on this sole ground.

3. Learned State counsel has supported impugned order of learned JMIC, Malerkotla submitting that there was no violation of procedure. He submits that petitioner never came to India to join investigation and was never arrested in the case. Supporting the order of learned trial Court dated 02.11.2021, he prayed for dismissal of the petition.

4. Section 82 Cr.P.C. which provides for publication of proclamation against a person absconding is reproduced hereunder for the facility of reference:-

—(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. 50 1

[(4) Where a proclamation published under sub-section (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).]

5. A co-ordinate Bench of this Court in **CRM-M-41715-2021** titled **“Anita Sharma Vs. State of Punjab”**, date of decision **26.03.2021**, has summarized the essential requirements of Section 82 Cr.P.C. as under:-

“(i) Prior issuance of warrant of arrest by the Court is sine qua



*non for issuance and publication of the proclamation and the Court has to first issue warrant of arrest against the person concerned. (See **Rohit Kumar Vs. State of Delhi**: 2008 CrI. J. 2561).*

*(ii) There must be a report before the Court that the person against whom warrant was issued had absconded or had been concealing himself so that the warrant of arrest could not be executed against him. However, the Court is not bound to take evidence in this regard before issuing a Proclamation under Section 82 (1) of the Cr.P.C.. (See **Rohit Kumar Vs. State of Delhi**: 2008 CrI. J. 2561).*

*(iii) The Court cannot issue the Proclamation as a matter of course because the Police is asking for it. The Court must be prima facie satisfied that the person has absconded or is concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence. (See **Bishundayal Mahton and others Vs. Emperor**:*

*AIR 1943 Patna 366 and **Devender Singh Negi Vs. State of U.P.**: 1994 CrI LJ (Allahabad HC) 1783).*

(iv) The requisite date and place for appearance must be specified in the proclamation requiring such person to appear on such date at the specified place.

*Such date must not be less than 30 clear days from the date of issuance an publication of the proclamation. (See **Gurappa Gugal and others Vs. State of Mysore** 1969 CriLJ 826 and **Shokat Ali Vs. State of Haryana**: 2020(2) RCR (Criminal) 339).*



(V) Where the period between issuance and publication of the proclamation and the specified date of hearing is less than thirty days, the accused cannot be

*4 of 8 declared a proclaimed person/offender and the proclamation has to be issued and published again. (See **Dilbagh Singh Vs. State of Punjab (P&II):***

*2015 (8) R.C.R. (criminal) 166 and **Ashok Kumar Vs. State of Haryana and another** : 2013 (4) RCR (Criminal) 550)*

*(vi) The Proclamation has to be published in the manner laid down in Section 82 (2) of the Cr.P.C.. For publication, the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house. The three sub-clauses (a)-(c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. (See **Pawan Kumar Gupta Vs. The State of W.B.:** 1973 CriLJ 1368). Where the Court so orders a copy of the proclamation has to be additionally published in a daily newspaper circulating in the place in which the accused ordinarily resides. Advisably, proclamation has to be issued with four copies so that one each of the three copies of the proclamation may be affixed to some conspicuous part of*



the house or homestead in which the accused ordinarily resides, to some conspicuous place of such town or village and to some conspicuous part of the Court-

house and report regarding publication may be made on the fourth copy of the proclamation. Additional copy will be required where the proclamation is also required to be published in the newspaper.

*(vii) Statement of the serving officer has to be recorded by the Court as to the date and mode of publication of the proclamation. (See **Birad Dan Vs. State**: 1958 CriLJ 965).*

*viii) The Court issuing the proclamation has to make a statement in writing in its order that the proclamation was duly published on a specified day in a manner specified in Section 82(2)(i) of the Cr.P.C.. Such statement in writing by the Court is declared to be conclusive evidence that the requirements of Section 82 have been complied with and that the proclamation was published on such day. (See **Birad Dan Vs. State**: 1958 CriLJ 965).*

*(xi) The conditions specified in Section 82(2) of the 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. (See **Devendra Singh Negi alias Debu Vs. State of U.P. and another** 1994 CriLJ 1783 and **Pal Singh Vs. The State**: 1955 CriLJ 318)".*

6. Record perused. Orders dated 17.08.2019, 21.09.2019, 07.12.2019 and 12.03.2020 of learned JMIC, Malerkotla reveal that non-



bailable warrants were issued against accused, petitioner herein, to procure his presence. Annexure P30 is the report of Nirbhey Singh ASI, PS Sadar, Ahmedgarh, on the non-bailable warrants which records that in the presence of Narinder Kaur, Sarpanch and Manjit Singh son of Pritam Singh of Village Chalehri Kalan, the house of Jaswinder Singh son of Amar Singh was raided. He was not found present and his sister-in-law Kulwinder Kaur informed that Jaswinder Singh was residing in foreign country in America.

7. A Coordinate Bench of this Court in CRM-M-6246-2017 titled "**Sucha Singh Vs. State of Punjab**", has observed as under:

"A person cannot be said to be "abscond" or "evade" the execution of warrant when he had gone to a distant place before the issue of the warrant. Dependence can be made on the judicial dictum rendered in the case of "M.S.R. Gundappa v. State of Karnataka" (1977 Cr LJ NOC 187), wherein it was held that a person who had gone abroad even before the issue of the warrant of arrest cannot be said to be absconding or concealing himself with the intention to disrupt the execution of that warrant."

8. In **Mehar Singh and Another Vs. State of Punjab** CRM-M-1513-2019, this Court held as under:

"In the present case, since the petitioners were already residing in Canada before the registration of FIR in question i.e. since the year 1997, there was no occasion for them to conceal themselves or abscond. A perusal of order dated 7-10-2008 (Annexure P-10) and order dated 21-12-2007 (Annexure P-4) does not reveal that the petitioners were ever attempted to be



served in Canada especially when there was no material on record that the petitioners had left the country after the registration of FIR in question with a view to abscond or conceal themselves. Rather in the inquiries conducted by the police, the petitioners were found to be innocent because the alleged papers in question were prepared in Canada. Thus, the petitioners were declared proclaimed offenders in violation of Section 82, Criminal Procedure Code. Accordingly, the impugned order dated 7-10-2008 (Annexure P-10), whereby the petitioners were declared proclaimed offenders, is set aside."

9. From the report dated 10.03.2020 of Nirbhey Singh ASI who was sent to execute the non-bailable warrants against the petitioner, it is evident that petitioner was resident of USA, though he was shown to be a resident of Village Chalehri Kalan District Fatehgarh Sahib. Copy of his U.S. Passport is on file. Entire record shows that petitioner is resident of U.S. where he is a citizen. Therefore, there was no ground to presume that he had absconded or was concealing himself. Issuance of proclamation by learned JMFC, Malerkotla was thus not warranted in the case and the proclamation was bad in law.

10. Order dated 02.11.2021 is liable to be set aside for violation of Section 82(1) Cr.P.C. as well.

11. In **Dilbagh Singh @ Sonu Vs. State of Punjab CRM-M-4100-2015, date of decision 05.05.2015**, it was observed as under:

"In order to ensure that an accused should have a fair opportunity to appear, 30 days clear notice is necessary and the proclamation should be published in the manner provided by



law. In the instant case, proclamation of the petitioner was issued on 20.08.2014 for 23.08.2014 and vide impugned order dated 25.09.2014 petitioner was declared proclaimed offender. It is apparent on the face of record that clear notice of 30 days as mandated under Section 82 Cr.P.C. has not been given to the petitioner and the procedure for publication of proclamation has also not been followed. Besides that, there is nothing on record to show that provisions of sub-section 2(i) of Section 82 Cr.P.C. have been complied with. As per these provisions a notice of proclamation is required to be read publicly in some conspicuous place of the town or village in which such person ordinarily resides. It is also required to 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. A copy of the notice is also required to be affixed to some conspicuous part of the Court-house. Thus, petitioner has been wrongly declared proclaimed offender vide impugned order without following the procedure of law.

12. Similarly in **CRM-M-1866-2017 titled 'Avtar Singh Vs. State of Punjab and Another'** a Coordinate Bench of this Court observed as under:-

"The above quoted provision is clear that through the proclamation made prior to declaration of a person as a proclaimed offender, he should be given not less than thirty days from the date of its proclamation to appear at a specified place and a specified time.



In the case in hand, thirty days were not given to the petitioner to appear before the Trial Court as the proclamation was made on 13.05.2011 requiring him to appear before the Trial Court on 14.05.2011. Thus, the proclamation and the subsequent order dated 03.09.2011 (Annexure P-2) declaring the petitioner to be a proclaimed offender do not confirm with the mandate of Section 81(1) of the Code”.

13. The proclamation issued by the Court is on record as Annexure P33. The same was issued on 07.09.2021 and petitioner Jaswinder Singh was directed to appear before learned JMIC, Malerkotla on 21.09.2021. Thus, the petitioner was granted only 14 days to appear before learned JMIC. It was on 21.09.2021 that the proclamation warrants were received back duly effected and statement of serving official Lakhvir Singh was recorded. Said statement is reproduced hereunder:-

“Stated that I in compliance of order of the Hon'ble Court, proclamation notice issued by this Hon'ble Court in above said case against accused in afore case, namely Jaswinder Singh son of Amar Singh, resident of Chalheri Kalana, District Fatehgarh Sahib, which was marked to me, after taking the same, I went to given address of accused, where accused was not found present at home. Then I pasted one copy of proclamation Notice on the wall of the house of accused and second copy was pasted at Bus Stand Chalehri Kalan and third copy of proclamation is affixed on the notice board of this Hon'ble Court. These are done on 08.09.2021. Today I am submitting forth copy alongwith written report before the Court. Copy of proclamation Notice is Ex.P1. My written report is Ex.P2.”



14. Evidently, the proclamation was published on 08.09.2021. From 21.09.2021, the case was adjourned to 22.10.2021, as period of 30 days had not elapsed. The adjournment to 22.10.2021, can never be construed as sufficient compliance of the provisions of Section 82(1) of the Cr.P.C. Thus, in view of ratio laid down by this Court in **Ashok Kumar Vs. State of Haryana and Another.2013 (4) RCR (Criminal) 550** and **Navneet Sharma Vs. State of Punjab and Others,2024 NCPHHC 10973**, it is evident that the trial Court has failed to comply with the mandate of Section 82(1) of Cr.P.C.

15. As per Section 82(2)(i)(a) Cr.P.C., notice of proclamation is to be publicly read in some conspicuous place of the town or village in which such person ordinarily resides. It also required to be affixed in some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village besides affixation on the Court-house.

16. It is evident from the statement of S.C. Lakhvir Singh that the proclamation was not publicly read over in some place of town or village where petitioner resided. The three sub-clauses (a)-(c) in Section 82(2)(i) Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. All three sub-clauses are mandatory and any violation whereof entails quashing of the order declaring an accused, a proclaimed person/offender.

17. There is another material illegality in the impugned order. In terms of Section 82(4), the Court can pronounce an accused a proclaimed offender only when he is accused of an offence punishable under Sections 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. Petitioner before this Court, is accused in FIR No.8 dated 26.01.2017 under Section 498-A IPC. Therefore, the proper course for the Court was to pronounce him a “proclaimed person” and make a declaration to that effect. Order dated 02.11.2021 does not align with Section 82(4) and is to be set aside on this score too.

18. Consequently, impugned order of learned JMIC, Malerkotla dated 02.11.2021 declaring the petitioner a “proclaimed offender” cannot be sustained in law and is hereby set aside and quashed. Since, petitioner has not ever joined investigation, he is directed to surrender before learned JMIC, Malerkotla, within a period of three months from today. Learned JMIC, Malerkotla shall proceed further in the matter, in accordance with law.

19. It is, however, clarified that in case petitioner fails to appear before learned trial Court within the stipulated time, the petition shall be deemed to be dismissed.

20. The petition is allowed on the terms above.

21. Pending applications, if any, stand disposed of.

(SHALINI SINGH NAGPAL)
JUDGE

12.09.2025
Sumit Singla

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No