



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

282

Date of decision: 10.07.2025

1. CRM-M-40709-2022 (O&M)

Jatin Narendra Kakkar

...Petitioner

versus

Mam Chand and others

...Respondents

2. CRM-M-42765-2022 (O&M)

Jatin Narendra Kakkar and another

...Petitioners

versus

Amrik Singh and another

...Respondents

3. CRM-M-42774-2022 (O&M)

Jatin Narendra Kakkar

...Petitioner

versus

Tilak Raj and others

...Respondents

4. CRM-M-42791-2022 (O&M)

Jatin Narendra Kakkar

...Petitioner

versus

M/s Roshan Lal Aman Kumar and others

...Respondents

5. CRM-M-42797-2022 (O&M)

Jatin Narendra Kakkar

...Petitioner

versus

M/s Sham Lal Ashish Kumar and others



...Respondents

6. CRM-M-42891-2022 (O&M)

Jatin Narendra Kakkar

...Petitioner

versus

M/s Jumma Ram Manish Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rohit Khanna, Advocate (through video conferencing)
for the petitioner(s) in all the cases.

Mr. Shubham Mangla, Advocate
for respondents No.1 and 2 in all the cases
except in CRM-M-42765-2022 & CRM-M-42797-2022.

Mr. Nitesh Sharma, DAG, Punjab
for respondent No.2 in CRM-M-42765-2022.

Mr. Harkesh Kumar, AAG, Haryana
for respondent No.3 in all the cases
except in CRM-M-42765-2022.

HARPREET SINGH BRAR J. (Oral)

1. This common order shall dispose of all the above mentioned proceedings as they arise out of similar factual matrix. However, for the sake of brevity, the facts are taken from CRM-M-40709-2022.

2. All the aforementioned petitions have been preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of order(s) dated 11.03.2019, 15.05.2018, 27.08.2018, 29.04.2019, 15.11.2021, 11.03.2019, 15.11.2021, passed by learned Judicial Magistrate Ist Class, Pehowa whereby the petitioner(s) have been declared as *Proclaimed Person* in the case(s) instituted under



Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as 'NI Act').

3. Briefly, the facts, as alleged, are that respondent No.1 is the sole proprietor of respondent No.2-M/s Robin Trading Company, which is in business of sale and purchase of food grains in Anaj Mandi, Pehowa. M/s Shakti Bhog Foods Ltd. (hereinafter 'accused-firm'), through its Directors, used to purchase paddy from respondent No.2, on credit. In the financial year 2014-15, the accused firm failed to make the requisite payment to respondent No.2 causing Rs. 14,670/- to be debited in its account as interest upto 31.03.2015. After making due adjustments, a sum of Rs. 2,43,244.91/- were found to be due on part of the accused firm towards respondent No.2. Subsequently, in the year 2015-16, the accused firm paid a sum of Rs. 50,000/- and the total remaining amount i.e. Rs. 2,28,344.91/- was carried forward in the next financial year (2016-17). To discharge its legal liability, the accused firm issued a cheque bearing no.340097 dated 11.04.2017 drawn upon Punjab National Bank for a sum of Rs.2,28,345/- in the name of respondent No.1. However, the same was dishonoured on presentation vide memo dated 09.06.2017 with the remarks- exceeds arrangement. A legal notice dated 14.06.2017 was served upon the accused firm but to no avail. Consequently, the complaint(s) were filed.

4. Learned counsel for the petitioner(s) *inter alia* contends that the petitioner – Jatin Narendra Kakkar is a citizen of United States and a Permanent Resident there. He was a Non-Executive Director in the



accused firm. However, he had resigned from the said post long before the disputed cheque was dishonoured. Further, the petitioner was neither an authorized signatory nor an authorized representative of the accused firm. He further submits that the petitioner has been declared a proclaimed person in contravention of the prescribed procedure. The summons, bailable warrants sought to be served on the petitioner were sent to the address of the accused firm, in spite of the fact that the addresses of the Directors of the company are available on the website of the Ministry of Corporate Affairs. As such no notices or summons were served on the petitioner. It is also contended that the learned trial Court was not made aware of the fact that the petitioner resides in the United States or else proceedings under Section 105 Cr.P.C. would have been initiated against him. Due to his non appearance, the trial Court has initiated proclamation proceedings against him. Ultimately, on 11.03.2019 (Annexure P-1), the trial Court declared the petitioner as proclaimed person which is liable to be set aside as the mandate of Section 82 Cr.P.C. has not been followed in its letter and spirit by the trial Court.

5. Learned State counsel along with Mr. Shubham Mangla, Advocate, supports the order passed by the learned trial Court by contending that the petitioners did not put in appearance before the learned trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure the presence of the petitioner(s).



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

7. 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.

8. In the eventuality of his non-appearance, the presence of the accused first ought to be secured by issuing summons or bailable warrants, and non-bailable warrants or proclamation should not generally be issued at the first instance. A perusal of the impugned order reveals that the trial Court has issued a proclamation straight away, without recording any reasons to indicate that the petitioner has absconded or is concealing himself from the process of law. Conspicuously, no summons or bailable warrants were issued prior to issuance of the proclamation. 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 Cr.P.C. and non-recording of the satisfaction itself makes such order



suffering from incurable illegality. Furthermore, the learned counsel for the petitioner has taken a specific stand that the petitioner was declared to be a proclaimed person without following the drill of Section 82 Cr.P.C. Since the proclamation was never served on the petitioner, all actions taken post non-execution of the proclamation stand vitiated.

9. In view of the aforesaid facts and circumstances, all the aforementioned petitions are allowed and the impugned order(s) dated 11.03.2019, 15.05.2018, 27.08.2018, 29.04.2019, 15.11.2021, 11.03.2019, 15.11.2021, vide which, the petitioner(s) were declared as proclaimed person as well as all the subsequent proceedings arising therefrom are hereby quashed qua the petitioner(s).

10. Pending miscellaneous application(s), if any shall also stand disposed of.

11. A photocopy of this order be placed on the file of other connected cases.

(HARPREET SINGH BRAR)
JUDGE

10.07.2025

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No