

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 7316 of
2026**

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RAJESHBHAI LALJIBHAI PATEL
Versus
STATE OF GUJARAT & ANR.

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Appearance:

NISHITH P ACHARYA(9308) for the Applicant(s) No. 1
MR K.M. ANTANI, APP for the Respondent(s) No. 1

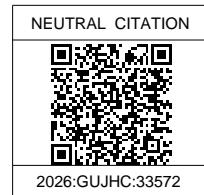
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CORAM:HONOURABLE MR.JUSTICE P. M. RAVAL

Date : 01/06/2026

ORAL ORDER

1. Rule fixed forthwith. Learned APP waives service of Rule on behalf of the respondent–State.
2. Heard learned advocate Mr. N.P. Acharya for the applicant and learned APP Mr. K.M. Antani for the respondent–State.
3. By way of the present writ petition, the applicant has assailed the order dated 07.05.2026 passed below Exh.24 in Criminal Case No.17 of 2018 by the learned Principal Senior Civil Judge, Dhandhuka, Ahmedabad (Rural), whereby the application preferred under Section 84 of the Cr.P.C. came to be rejected on the ground that the same was barred by limitation, having not been filed within six months from the date of attachment, and also on merits.



4. Learned advocate for the applicant submitted that the Delhi High Court as well as the Punjab and Haryana High Court have consistently taken the view that, in the absence of a person being declared a proclaimed offender after following the procedure prescribed under the Cr.P.C., the consequential proceedings cannot be sustained. It is further submitted that only in respect of the offences enumerated under sub-clause (4) of Section 82 of the Cr.P.C. can a person be declared a proclaimed offender. Since an offence under Section 138 of the Negotiable Instruments Act is not one of the offences contemplated under Section 82(4) of the Cr.P.C., the proceedings undertaken by the trial Court are without jurisdiction. On the aforesaid grounds, it is urged that the present petition be allowed.

5. Learned APP Mr. K.M. Antani, on the other hand, submitted that the facts involved in the judgments relied upon by the applicant are distinguishable. According to him, in those cases the challenge was to FIRs registered under Section 174A of the IPC, whereas in the present case the applicant has challenged an order passed by the learned trial Court under Section 84 of the Cr.P.C. It is further submitted that the application under Section 84 was admittedly filed beyond the prescribed period and was therefore rightly rejected as time-barred. Learned APP further submitted that, if at all the applicant is aggrieved by the order passed by the Magistrate, he has an alternative remedy under Section 84(4) of the Cr.P.C. to establish his right in respect of the property in dispute within a period of one year from the date of such

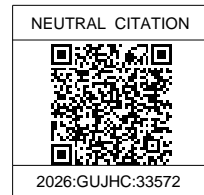


order. Under the circumstances, it is urged that the present petition be rejected.

6. Heard learned advocates for the respective parties. This Court has gone through the impugned order as well as the correspondence produced at Exh.21 on record. The letter dated 10.02.2026 written by the Senior Police Inspector, Vashi Police Station, Navi Mumbai, clearly indicates that vide communication dated 09.02.2026, the Circle Officer, Belapur, Navi Mumbai, had initiated the process of attachment of the property. The said communication further reveals that it would take approximately 10 to 15 days to complete the entire procedure. Thus, it transpires that as on 10.02.2026, the attachment of the property had not been completed. It further transpires from the panchnama placed on record that the attachment proceedings were ultimately carried out on 13.05.2026.

7. Be that as it may, the fact remains that the present applicant, who is the son of the original accused facing trial under Section 138 of the Negotiable Instruments Act, had already lodged a missing person complaint regarding his father on 12.08.2017 before the Vashi Police Station, Navi Mumbai. The said complaint is annexed with the present petition at pages 2 to 5.

8. In view of the aforesaid facts, reliance placed by the learned advocate for the applicant on the judgment reported in 2023 Supreme (P&H) 752 in the case of *Balwinder Singh v.*



State of Punjab assumes significance. In the said decision, it was held that declaring the petitioner as a proclaimed offender was not legal, as the complaint under Section 138 of the Negotiable Instruments Act pertained to an offence other than those specified for the purpose of declaring a person as a proclaimed offender under Section 82(4) of the Cr.P.C. Consequently, the order passed by the learned Chief Judicial Magistrate declaring the petitioner as a proclaimed offender came to be quashed and set aside.

9. So far as the judgment relied upon by the learned advocate for the applicant in ***Sunil Tyagi v. Government of NCT of Delhi and Another, reported in 2021 Supreme (Delhi) 1900***, is concerned, it was held therein that since the petitioner was not charged with any of the offences mentioned in Section 82(4) of the Cr.P.C., the declaration of the petitioner as a proclaimed offender was invalid. Consequently, the prosecution under Section 174A of the IPC was also quashed and set aside.

10. The question that arises of consideration is as to whether a person who is not accused of any of the offences mentioned in Section 82(4) Cr.P.C. can be declared a Proclaimed Offender?

11. Considering the factual aspects of the matter, it is not in dispute that the present applicant lodged a missing person report regarding his father before the Vashi Police Station on 12.08.2017. Thereafter, a complaint under Section 138 of the



Negotiable Instruments Act came to be filed against the father of the present applicant on 08.12.2017 for dishonour of four cheques aggregating to Rs.19,61,000/-

12. It further appears from the record that summons issued in Criminal Case No.17 of 2018 were returned unserved on the returnable date, i.e., 12.02.2018. In view of the fact that the applicant had already lodged a missing person report regarding his father on 12.08.2017 before the Vashi Police Station, the return of summons as unserved was not unnatural. The applicant himself is not an accused in the complaint under the Negotiable Instruments Act. Therefore, the issue which requires consideration is whether the father of the present applicant was deliberately evading service of summons.

13. From the record, it appears that since 12.08.2017, when the missing person report came to be lodged by the applicant regarding his father, the summons being returned unserved was an obvious consequence and cannot, by itself, be treated as a deliberate attempt to evade the process of law.

14. Be that as it may, the more fundamental issue is whether the learned trial Court had the jurisdiction to declare the father of the present applicant as a proclaimed offender. Admittedly, the father of the applicant was facing prosecution under Section 138 of the Negotiable Instruments Act and was not charged with any of the nineteen offences enumerated under Section 82(4) of the Cr.P.C.



15. Section 82 of Cr.P.C. reads as under:

“82. Proclamation for person absconding.

(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.

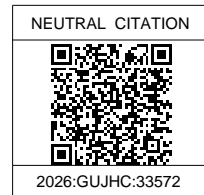
(2) The proclamation shall be published as follows:-

(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.

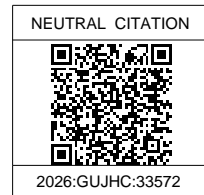


(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(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 things 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).”

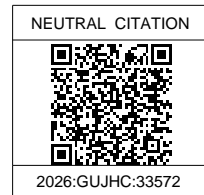
16. Section 82(1) empowers a court to publish a written proclamation against a person, requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation. This proclamation is issued if the court has reason to believe that a



person against whom a warrant has been issued by it, has absconded or is concealing himself so that such warrant cannot be executed. Further, it may be noticed that proclamation can be issued not only against a person, against whom a warrant has been issued and who was absconded but also against a person who is concealing himself so that such warrant cannot be executed.

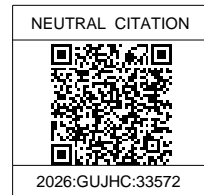
17. Section 82(2) stipulates the manner and procedure of such proclamation. Section 83(3) stipulates that a statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

17.1 Section 82(4) and 82(5) were inserted by the 2005 amendment of the Code w.e.f. 23.06.2006. Section 82(4) stipulates that a person, in respect of whom a proclamation has been published under section 82(1), if he fails to appear at the specified place and time required by the proclamation and if he is accused of offences mentioned in Section 82(4), the court may pronounce him as a proclaimed offender, after making such inquiry as it things fit. Section 82(5) stipulates that the provisions of Section 82(2) and (3) shall apply to a declaration made by the court under section 82(4) as they apply to a proclamation made under 82(1).



18. Other than section 82(4), Section 82 does not stipulate the consequences of non-compliance of the proclamation issued under it. 82(4) stipulates that where the proclaimed person fails to appear at the specified place and time, the court may pronounce him as a proclaimed offender. This pronouncement as a proclaimed offender can only be issued if he is accused of the offences stipulated in 82(4) and that also, only after the court has made such inquiry as it deems fit. There is no provision, other than section 82(4) in the Cr.P.C., under which the court can pronounce a person as a proclaimed offender.

19. One of the contentions of learned Additional Public Prosecutor for the State is that every person in respect of whom a proclamation has been published is deemed to be a proclaimed offender irrespective of the provisions of Section 82(4). If such contention is considered then the consequence would be that a person qua whom a proclamation has been published and is not accused of any of the offences mentioned in Section 82(4), would be deemed so, without the safeguard of an inquiry stipulated in section 82(4). This cannot be the intention of the legislature. The offences enumerated in section 82(4) are serious in nature. It could not be the intention of the legislature that qua a person who is accused of offences that are serious in nature, the safeguard of an inquiry is stipulated and no such safeguard is stipulated qua a person who is accused of offences that may not be so serious- (like the offence in case on hand).



20. Let me examine the other provisions contained in Cr.P.C. qua proclaimed offenders.

20.1 Section 40 Cr.P.C. inter alia stipulates that every officer employed in connection with the affairs of a village and every person residing in a village shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is nearer, any information which he may possess respecting the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender. Section 40(2), stipulates that for the said section the expression 'proclaimed offender' includes any person proclaimed as an offender by any Court or authority in any territory in India to which this Code does not extend, in respect of any act which if committed in the territories to which this Code extends, would be an offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, 302, 304, 382, 392 to 399 (both inclusive), 402, 435, 436, 449, 450 and 457 to 460 (both inclusive).

21. Section 41 Cr.P.C. inter alia empowers every police officer to arrest any person who has been proclaimed as an offender either under the Cr.P.C or by order of the State Government, without an order from a Magistrate and without a warrant.

21.1 Section 43 Cr.P.C. inter alia empowers every private person to arrest or cause to be arrested any proclaimed



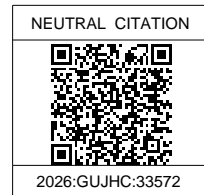
offender.

21.2 Section 73 Cr.P.C. inter alia authorises the Chief Judicial Magistrate or a Magistrate of the first class to direct a warrant to any person within his local jurisdiction for the arrest of a proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.

22. The stipulations contained in Sections 40, 41, 43 and 73 qua a proclaimed offender clearly shows that there are adverse consequences attached to being declared a proclaimed offender. The intention of the legislature cannot be that such adverse consequences would automatically get attracted to a person qua whom a proclamation has been published and is accused of offences of a less serious nature as the case on hand but for a person who is accused of serious offences enumerated in section 82(4), they would get attracted only after the safeguard stipulated in section 82(4) has been followed.

23. It would also be profitable to refer to Sections 174 and 174A IPC which reads as under:

"174. Non-attendance in obedience to an order from public servant --Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the



place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both, or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

174A. Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.--Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine."

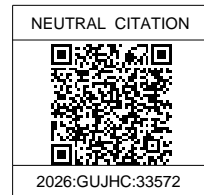
24. Section 174 makes it an offences if a person being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant, intentionally omits to attend at that place or time, or departs



from the place where he is bound to attend before the time at which it is lawful for him to depart. Thus, on bare reading of Section 174 it is evident that the same applies to all persons and public servants and is in respect of summons, notice, order or proclamation proceeding. Section 174 is not restricted only to accused but inter alia encompasses in its scope, witnesses, parties to civil and criminal proceedings, noticees to whom notice may have been issued by public authorities.

24.1 On the other hand section 174A makes it an offence if a person, required by a proclamation published under subsection (1) of section 82, to appear, fails to appear. It further stipulates that if such a person fails to appear he would be punishable with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under section 82(4) against such a person, pronouncing him as a proclaimed offender, then he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

25. Under section 82 (1) Cr.P.C. a proclamation can be issued only against a person against whom a warrant has been issued and has absconded or is concealing himself so that such warrant cannot be executed. Clearly, the scope and operation of sections 174 and 174A are different. However, there may be an overlap in their operation but largely they operate in different spheres. Persons covered by section 174A second part would be a sub set of persons covered by section 174A first part who in turn would be subset of persons covered by section 174 IPC.



26. Further it may be seen that sections 83, 84 and 85 Cr.P.C., which provide for attachment of property of person absconding, claims & objections thereto and release, sale and restoration of attached properties of persons qua whom a declaration under section 82 has been issued, uses the expression 'Proclaimed Person'.

27. The provisions of Section 82 to 84 become applicable on the issuance of the proclamation and are not dependent on the declaration under section 82(4).

27.1 I am thus of the considered view that a person who is accused of offences other than the ones enumerated in section 82(4) and qua whom a proclamation has been published under section 82(1) would be a 'Proclaimed person' and not a deemed 'Proclaimed Offender'.

27.2 As noticed above, there is no provision other than section 82(4) for pronouncing such a person as a proclaimed offender and 82(4) applies only in respect of persons accused of sections of IPC enumerated therein. This view is again fortified by the judgments relied by learned advocate for the petitioner.

28. In view of the aforesaid, the present petition deserves to be allowed. The order dated 07.05.2026 passed below Exh.24 in Criminal Case No.17 of 2018 by the learned Principal Senior Civil Judge, Ahmedabad (Rural), as well as the order of attachment dated 31.01.2024 passed under Section 83 of the



Cr.P.C. below Exh.25 and all consequential proceedings arising therefrom, are hereby quashed and set aside.

29. It is, however, clarified that the trial Court shall be at liberty to take such action as may be permissible in accordance with law.

30. Rule is made absolute accordingly. Direct service is permitted.

MOHD SAIF ULLAH

(P. M. RAVAL, J)