

[2023 LiveLaw \(SC\) 638](#)

IN THE SUPREME COURT OF INDIA

S. RAVINDRA BHAT; J., ARAVIND KUMAR; J.

Petition(s) for Special Leave to Appeal (Crl.) No(s). 1176/2023
THE STATE OF HARYANA versus DARSHAN SINGH & ANR.

Code of Criminal Procedure, 1973; Sections 82, 83 - The High Court by its impugned order even while granting bail to the accused issued detailed and elaborate guidelines with respect to the manner of issuing proclamations under Sections 82 and 83 Cr.P.C. The impugned order has inadvertently or otherwise entirely overlooked Form 5 and 6 and the important provisions of Sections 83 Cr.P.C. and 174A IPC. Therefore, to the extent, they issue directions to the State and to all Courts within the territories of Punjab, Haryana and Union Territory of Chandigarh; are hereby set aside. However, to the extent that the order grants bail to the accused, is left undisturbed.

(Arising out of impugned final judgment and order dated 27-05-2022 in CRM-M No. 27287/2020 passed by the High Court of Punjab & Haryana at Chandigarh)

For Petitioner(s) Mr. Nikhil Goel, A.A.G. Dr. Monika Gusain, AOR

For Respondent(s) Ms. Nupur Kumar, AOR Ms. Muskan Nagpal, Adv.

ORDER

The High Court by its impugned order even while granting bail to the accused issued detailed and elaborate guidelines with respect to the manner of issuing proclamations under Sections 82 and 83 Cr.P.C. The impugned order decides inter alia that:

“Learned counsel for the petitioner(s) as well as learned State counsel submit that since one of the eye-witnesses, namely Amrik Singh was declared a proclaimed person by the trial Court, his statement has not been recorded and after 2019, no efforts have been made by the trial Court to summons aforesaid witnesses.

It is surprising that the trial Court has adopted a procedure under Section 82 Cr.P. C. against a witness, though the procedure under Section 82 Cr.P. C. is meant for appearance of an accused person.”

The impugned order also reveals that the Court took into consideration Sections 174, 82 and 311 IPC. The Court noted Section 174 but went on to hold that the defaulting witness can be punished with simple imprisonment with a term extending up to six months or fine.

The provisions of Section 174 Cr. P.C. are clear and they require the person bound to attend “*In person or by an agent at a certain place and time, in obedience to summons, notice, order, omits to do so intentionally*”, will be punished. The consequence of non-appearance is, however, spelt out in Section 174A, which reads as follows:

“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.”

Reading of “Sections 82 and 83 also reveal the further steps to be taken by the High Court concerned after the summons are issued in default of which warrants can be issued, i.e. issuance of proclamation and the consequent attachment in respect to whom the proclamation is issued.

It is evident that the impugned order has inadvertently or otherwise entirely overlooked Form 5 and 6 and the important provisions of the Code of Criminal Procedure, i.e. Sections 83 and 174A.

Therefore, to the extent, they issue directions to the State and to all Courts within the territories of Punjab, Haryana and Union Territory of Chandigarh; are hereby set aside. However, to the extent that the order grants bail to the accused, is left undisturbed.

The special leave petition is allowed in the above terms Pending applications, if any, are disposed of.

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