



CrPC S. 82, 83, and 174 - Action Against Witnesses who do not appear inspite of notices - Proceedings can be taken to declare them as Proclaimed offender - Directions issued by P&H High Court in 2022 PLRonline 0597 to all D&S Judges/ DGP, set aside. [(2023-4) PLR 291 (SC)]

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crpc s. 82, 83, and 174 - Action Against Witnesses

(2023-4)212 PLR 291 (SC)

SUPREME COURT OF INDIA

Present : Justice S. Ravindra Bhat and Justice Aravind Kumar

STATE OF HARYANA

versus

DARSHAN SINGH & ANR.

Petition(s) for Special Leave to Appeal (Crl.) No(s). 1176/2023

Criminal Procedure Code, 1973, Section 82, 83, 174 - Witness - Whether action can be taken against him under section 82 or deals only with accused persons - S. 82 and 83 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 - Reference is made to Form 5 and 6 and the important provisions of the Code of Criminal Procedure, i.e. Sections 83 and 174A.

Held, [punjab and haryana](#) High Court in [2022 PLRonline 0597 \(CRM-M No. 27287/2020\)](#) issued detailed and elaborate guidelines with respect to the manner of issuing proclamations under Sections 82 and 83 Cr.P.C. - 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.

(Arising out of impugned final [judgment](#) and order dated 27-05-2022 in CRM-M No. 27287/2020 reported as 2022 PLRonline 0597, passed by the High Court of Punjab & Haryana at Chandigarh, wherein the direction were issued to all the District & Sessions [judges](#) in the States of Punjab, Haryana and U.T., Chandigarh, as well as to the Director General of Police, Punjab, Haryana and U.T., Chandigarh for further transmitting the same to all the Investigating Officers to follow the guidelines of the Hon'ble Supreme Court - Set Aside.)

Mr. Nikhil Goel, A.A.G. Dr. Monika Gusain, AOR, For Petitioner.. Ms. Nupur Kumar, AOR Ms. Muskan Nagpal, For Respondent.

ORDER

(08.08.2023) - 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.”

2. The impugned order also reveals that the Court took into consideration Sections 174, 82 and 311 IPC. The

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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.

3. 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.

4. 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.”

5. 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.

6. 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.

7. 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.

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

Tags: [CrPC S. 174](#), [CrPC S. 82](#), [CrPC S. 83](#), [proclaimed person](#), [Proclamation](#)