

2012 PLRonline 0009

Punjab and Haryana High Court

JUSTICE: M.M. SINGH BEDI

Smt. Deeksha Puri v. State of Haryana

C.R.M. M-359 of 2012

16.10.2012

CrPC. S. 82 - Proclaimed offender - the moment a proclaimed offender is arrested or he appears at the place and time required by the Court or surrenders before the Court or authority issuing warrants or proclamation, as the case may be, the order of declaration of proclaimed offender would cease to be operative. [Para 41]

For Petitioner: Mr. Tanvir Ahmad Mir, Advocate with Mr. Munish Behl, Advocate And For Respondents: Mr. Subhash Godara, Addl., A.G., Haryana, Mr. R.S. Cheema, Senior Advocate with Mr. Nishant Joshi, Advocate

Judgment Text

1. A large number of petitions are being filed by absconding accused persons, seeking quashing of the orders declaring them "proclaimed offenders" on the misconceived notion that, since they are not accused of the offences punishable as mentioned in Section 82 (4) Cr.P.C. (added by Section 12 of Act No. 25 of 2005) i.e. under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of Indian Penal Code, they cannot be declared proclaimed offenders. There are few instances in which such pleas are raised and believed to quash the proclamations declaring accused as "proclaimed offenders" for violation of Section 82 (4) Cr.P.C. Sub-Section (4) of Section 82 Cr.P.C. which has raised controversy reads as under :-

Section 82 (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, 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.

In the present case also the petitioner having been declared a proclaimed offender in FIR No. 341 dated December 27, 2010 under Sections 420, 467, 468, 471, 120B IPC, registered at Police Station DLF-II, Gurgaon, District Gurgaon, has challenged the order dated October 31, 2011, passed by the Court of CJM, Gurgaon, declaring the petitioner a proclaimed offender. The main' ground of challenge is that the said order has been passed in violation

of the provisions of Section 82(4) Cr.P.C., as the offences for which the petitioner is sought to be prosecuted and punished, do not fall under the list of offences which are specified in Section 82 (4) Cr.P.C. Petitioner claims that the order declaring the petitioner a proclaimed offender is not sustainable in the eyes of law and is thus liable to be quashed.

The provisions of Section 82 (4) and (5) Cr.P.C. were introduced by the Code of Criminal Procedure (Amendment Act 2005) (25 of 2005) by Section 12 w.e.f. June 23,2006, hereinafter referred to as the Act 25 of 2005. Prior to the said amendment, Section 82 Cr.P.C. contained only sub-sections (1), (2) and (3) pertaining to the proclamation of persons absconding.

REQUIREMENT OF INTERPRETATION OF SECTION 82 (4) Cr.P.C.

2. The present petition warrants interpretation, construction and determination of scope and applicability of sub-sections (4) of Section 82 Cr.P.C. as on the basis of isolated literal construction of Section 82 (4) Cr.P.C., avoiding harmonious and Contextual interpretation, in relation to other provisions of Cr.P.C. and IPC. Few decisions have been rendered by different Courts, setting aside declarations of proclaimed offenders, of lower Courts, being violative of Section 82 (4) Cr.P.C. Few of the instances cited by learned counsel for the petitioner are as follows:-

i) *Satinder Singh v. State of U.T. Chandigarh and another*, 2001 (2) RCR (Crl.) 89. In the said case, the order declaring the petitioner a proclaimed offender was set aside merely on the ground that it was in violation of provisions of Section 82 (4) Cr.P.C.;

ii) In *Rahul Dutta v. State of Haryana*, 2012 (2) RCR (Crl.) 585, while considering the application for regular bail pending trial in offences under Sections 498-A, 406 read with Section 174-A IPC, the scope of Section 82 (4) Cr.P.C. was considered in context to the amendment by Act No. 25 of 2005, holding that the term “proclaimed offender” has different connotations and that a person who is evading the execution of warrants of arrest he should under the special sections of IPC mentioned in Section 82 (4) Cr.P.C. can only be declared to be a “proclaimed offender” and a person under the other provisions of IPC and the laws can be declared to be a “proclaimed person” in terms of Section 82 (1) Cr.P.C. and regular bail was granted to the petitioner. The provisions of Section 40 (2) (i) Cr.P.C. and Section 40(1)(b) were taken into consideration while forming the said opinion.

iii) In *Likhma Ram v. State of Punjab and another*, following the judgment in *Satinder Singh’s* case (*supra*), another Bench of this Court had set aside an order declaring petitioner as a proclaimed offender as the sections in which the petitioner was involved did not fall under Section 82(4) Cr.P.C., however, a direction was given to the petitioner to appear before the Magistrate on a particular date with a direction that he would be released on bail.

iv) In *Sukhwinder Singh v. State of Punjab*, Crl. Misc. No. M-18469 of 2011, this Court had set aside an order declaring an accused as proclaimed offender on the ground that it was contrary to the provisions of Section 82 (4) Cr.P.C.

v) In Baldev Singh v. State of Punjab, Crl. Misc. No. M-6301 of 2011, again this Court had set aside an order passed by Judicial Magistrate declaring the petitioner as a proclaimed offender, as it was violative of Section 82(4) Cr.P.C. as the sections in which the accused had been declared proclaimed offender were not mentioned in Section 82(4) Cr.P.C.

vi) In Balihar Dhami and another v. State of Punjab and another, Crl. Misc. No. M-7249 of 2011, decided on March 9, 2011 by this Court, the order declaring the petitioner a proclaimed offender was set aside as it was violative of provisions of Section 82(4) Cr.P.C., however a direction was given to the petitioner to appear before the trial Court within a period of three weeks and furnish bail bonds.

vii) Similarly in Sarabjit Rai v. State of Punjab, Crl. Misc. No. M-37489 of 2010, decided on January 27, 2011, the order declaring the petitioner a proclaimed offender was set aside being violative of Section 82(4) Cr.P.C., however, 10 days was given to the petitioner to appear before the Court and furnish bail bonds.

viii) Similarly in Jaswant Singh v. State of Punjab and another, Crl. Misc. No. M-31531 of 2011, decided on December 15, 2011, following the judgment of Satinder Singh's case (supra), it was held that the petitioner could not be declared a proclaimed offender in offence under Sections 406, 420, 498A IPC as sections did not fall under Section 82(4) Cr.P.C.

ix) In Ramji Dass v. State of Punjab, Crl. Misc. No. M-24417 of 2010, decided on February 10, 2011 by this Court, the order declaring the petitioner a proclaimed offender was set aside on the ground that it was violative of Section 82(4) Cr.P.C. and that he was never served in England.

3. But contrary to the abovesaid judgments, in Rajiv v. State of Haryana, Crl. Misc. No. M-30146 of 2011, decided on October 12, 2011, a coordinate Bench has considered the provisions of Section 82(4) Cr.P.C. and construed the same observing that the said provision cannot be read in isolation by ignoring the effect of other corresponding amendments incorporated in IPC creating an offence in the form of Section 174-A' IPC, and opted to differ from Satinder Singh's case (supra). The accused, who was declared a proclaimed offender in year 2002 in offences under Sections 420, 467, 468 and 471 IPC challenged the same in year 2006 by filing revision before Sessions Court which was dismissed. The judgment of Revisional Court was upheld holding that no binding precedent would emerge from Satinder Singh's case (supra).

4. Having been confronted with two sets of opinions regarding the definition of "proclaimed offenders" on judicial interpretation of subsection (4) of Section 82 Cr.P.C., one is reminded of the observations of Justice Krishna Iyer, in Bangalore Water Supply and Sewerage Board v. A. Rajappa and others : AIR 1978 SC 548 (1) when controversy regarding interpretation of the word 'Industry' in Industrial Disputes Act was raised. It was observed as follows:-

Legalese and logomachy have the genius to inject mystique into common words, alienating the laity in effect from the rule of law.

5. The provisions of Section 82(4) Cr.P.C. which were incorporated vide amendment Act No. 25 of 2005, cannot be appreciated by construing the added sub-section (4) in isolation, but the said provision has to be read alongwith the other Sections of IPC which have been incorporated by the same amendment Act. Section 174A and Section 229 A in IPC were also incorporated by the said Act No. 25 of 2005 by Section 4 by notification dated June 21, 2006 which became effective from June 23, 2006. The first schedule of Cr.P.C. was also amended by incorporating new entries by Section 42 of the Act 25 of 2005. It is necessary for the fair adjudication of the present case, to refer to the scheme of Criminal Procedure Code and few provisions of IPC. The provisions existing prior to the amendment are also required to be construed to determine whether the subsection (4) of Section 82 Cr.P.C. is meant to provide a relaxation to the “offenders” not falling in the ambit of said provision from the evil consequences attached to a proclaimed offender by debarring a Court to declare a person a proclaimed offender evading appearance before the Court, despite proclamation under Section 82(1), (2) and (3) Cr.P.C.

SCHEME OF PROCEDURAL LAW IN CRIMINAL PROCEDURE CODE AND SUBSTANTIVE LAW IN IPC :

6. It may be useful to note that criminal law, in its wider sense consists of both the ‘substantive criminal law’ and ‘procedural criminal law’. The substantive criminal law defines offences and prescribes punishment for the same whereas the procedural criminal law facilitates to administer the substantive law and to protect the Society against the criminals and law breakers. The procedural criminal law has been designed to look after the process of administration and enforcement of substantive criminal law. In the absence of procedural law, the substantive criminal law would be of not much importance because without the enforcement mechanism, the threat of punishment held out to the law breakers by the substantive criminal law would remain a mere formality and empty practice. Empty threats do not prevent crime and without deterrent effect, the law of crimes would be of hardly any meaning or justification. The law of criminal procedure is complimentary to the substantive criminal law and failure of the procedure in criminal laws would seriously affect the substantive criminal law. While formulating the Code of Criminal Procedure “right of fair trial” to an accused has been ensured adopting the principles of natural justice and provisions of the Constitution of India. An accused has been ensured sufficient rights and privileges during the course of criminal trial which are enshrined in the provisions of procedural law. The system of criminal trial envisaged by Cr.P.C. is the adversary system based on accusatorial method. A fair trial ensures few rights of accused i.e. right of presumption of innocence in favour of the accused till proved guilty; right of the accused to know specific grounds of his arrest; right of person arrested to be brought before the Magistrate without delay and in no case the said delay could exceed 24 hours; right of an accused for open trial; right of an accused to be defended by a counsel of his choice; right of cross-examination; right of an accused of having a fair and impartial investigation; right of an accused to speedy investigation; right of an accused to the examination of witnesses in his presence; right of an accused to keep silence; right of an accused to get the copy of the statements of the prosecution witnesses and the production of defence; entitlement of all the documents and statements; right of getting bail during pre-trial or pending trial and post conviction pending appeal in certain cases; right of an accused against double

jeopardy; right of an accused to get an opportunity to submit his case before framing of charges against him; right of an accused not to suffer imprisonment for a period longer than the maximum; right of an accused not to be tried beyond the period of limitation; right of an accused to be heard on question of sentence in warrant cases; right of an accused to live with human dignity as per provisions of Article 21 of the Constitution of India; right of speedy trial; right of an accused to receive legal aid; and right of an accused to claim identification.

COMPELLING THE PRESENCE OF ACCUSED AT THE TRIAL AND RELEVANT PROVISIONS OF LAW :-

7. All the privileges of fair trial can be used by an accused only after he puts in appearance before the Court of law.

Enforcement of law on one hand and protection of citizen from operation of injustice in the hands of the law enforcement machinery, on the other is, thus, required to be balanced. An accused has to be brought before the Court to face trial. Presence of an accused before Court of law is sine qua non for a fair trial.

In order to compel the appearance of an accused, the provisions of Chapter VI of Cr.P.C. are relevant which prescribe that an accused can be compelled to appear (i) by issuance of summons (provisions of Sections 61 to 69); (ii) by issuance of warrants and in lieu of summons (provisions of Sections 70 to 81); (iii) proclamation of an offender; (Section 82); (iv) attachment of his property (Section 83); and (iv) bonds with or without sureties to appear before the Court on certain dates.

8. One of the most important ingredients of fair trial is that the trial proceedings should be conducted in presence of the accused and he is given a fair opportunity to defend himself. The legal procedure further ensures that in case the accused is found guilty after trial, he should be available in person to receive the sentence passed on him. The presence of the accused at the time of the trial can be ensured by arresting him and detaining him during the period of trial. If the presence of an accused can be reasonably ensured otherwise then his arrest and detention, the law does not deprive him of his liberty. AP the provisions regarding issue of summons or of a warrant of arrest; the provisions relating to arrest without warrant, and various provisions, to release an accused on bail are aimed at ensuring the presence of the accused during the trial, without unreasonably depriving him of his liberty. In case of intentional omission to attend a Court in obedience to the summons or warrants, the accused is liable to be punished under Section 174 IPC with six months imprisonment. As per the scheme of the Code depending on the nature of the case, a summons is to be issued to the accused in the first instance and in case of non-appearance, pursuant to summons, a warrant of arrest normally is to be issued to an accused. The Code, however, makes it discretionary for a Judicial Officer to depart from this general rule if circumstances so demand in a particular case. The relevant provisions in this connection are contained in Section 204 Cr.P.C. and Section 87 Cr.P.C. which enable a Magistrate to issue process while taking cognizance of an offence by issuing summons or warrants, as the case may be. Section 87 Cr.P.C. enables a Court to issue warrants in lieu of or in addition to

summons in certain circumstances after recording reasons for doing so, Wide power has been given to the Courts for even dispensing with the personal appearance of an accused. In this context, a reference can be made to Sections 205, 273 and 317 Cr.P.C. Section 299 Cr.P.C. enables a Court to record the evidence in absence of an accused, if it is proved that an accused person is absconding and that there is no immediate prospect of arresting him.

9. Arrest is considered to be most effective method of securing the attendance of accused during trial, though in some cases it is not desirable to use it in all cases. A warrant of arrest is a written order issued by a Magistrate addressed to a police officer or some other person specially named and commanding him to arrest the body of the accused person named in it. Section 70 Cr.P.C. deals with the form of warrant arrest and duration. Section 71 deals with power to direct security to be taken, Sections 72 and 73 Cr.P.C. deal with Mode of directing a warrant. Modes of execution of Warrants of arrest are mentioned in Section 74 Cr.P.C. to Section 81 Cr.P.C. Section 41 Cr.P.C. authorizes a police officer to arrest any person without a warrant in various circumstances but Section 41(1)(c) Cr.P.C. provides that a police officer may without an order from a Magistrate or without a warrant, arrest any person who has been a proclaimed offender either under the Code of Criminal Procedure or by order of the State Government.

10. Taking into consideration the general interest of the society that a person committing a very serious offence should be immediately arrested and expeditiously dealt with according to law, the Code of Criminal Procedure empowers a private citizen to make arrest without warrant under certain situations, which are mentioned in Section 43 of the Code of Criminal Procedure.

Chapter IV gives powers to the superior officers of the police. Chapter B of Chapter IV requires public to assist the Magistrates and police in preventing the escape of any person, whom the Magistrate or police officer is authorized to arrest. In Chapter IV (B), Section 38 Cr.P.C. requires that when warrants are directed against a person other than a police officer, any person may aid in the execution of such warrants. Section 39 Cr.P.C. requires every person aware of the commission or of intention of any person to commit any offence punishable under various sections of IPC mentioned therein to forthwith give information to the nearest Magistrate or police officer of such commission or intention. Section 40 Cr.P.C. imposes a duty on every officer employed in connection with the affairs of a village and every person residing in a village to forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is nearer, any information which may be in respect to the whereabouts of any accused, convict or proclaimed offender. The word 'village', 'proclaimed offender' and the 'officer employed in connection with the affairs' have been explained in Section 40 Cr.P.C. Section 40 being relevant, the same is reproduced hereunder:-

40. Duty of officers employed in connection with the affairs of a village to make certain report-(1) Every officer employed in connection with the affairs of a village and every person residing in a village and every person 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

- (a) The permanent or temporary residence of any notorious receiver or vendor of stolen property in or near such village;
- (b) The resort to any place within, or the passage through such village any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;
- (c) The Commission of, or intention to commit, in or near such village any, non-bailable offence or any offence punishable under section 143, section 144, section 145, section 147 or section 148 of the Indian Penal Code (45 of 1860);
- (d) The occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a. death has occurred or the disappearance from such village of any; person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person;
- (e) The Commission of, or intention to commit, at any place out of India near such village any act which, if committed in India, would be an offence punishable under any of the following sections of the Indian penal Code (45 of 1860), namely, sections 231 to 238 (both inclusive), section 302, 304, 382, 392 to 399 (both inclusive), 402, 435, 436, 449, 457 to 460 (both inclusive), section 489A, 489B, 489C and 489D;
- (f) Any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate by general' "special order made with the previous sanction of the State Government, has directed him to communicate information.

(2) In this section, –

- (i) "Village" includes village-lands;
- (ii) 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, section 302, 304, 382, 392 to 399 (both inclusive), section 402, 435, 436, 449, 450 and 457 to 460 (both inclusive);
- (iii) The words "officer employed in connection with the affairs of the village" means a member of the Panchayat of the village and includes the headman and every officer or other person appointed to perform any function connected with the administration of the village.

Since the presence of an accused, at pre-trial stage or during the trial is most important

procedural requirement of a fair trial, in order to ensure the said presence, by abovesaid procedures, the legislature had made a specific provision describing punishment for non-attendance in obedience to an order from public or Court of justice under Section 174 IPC.

11. In order to ensure that an accused should have a fair opportunity to appear after a notice by way of publication, before he is declared a proclaimed offender, liable for penal consequences, Section 82 Cr.P.C. was incorporated in chapter VI of Cr.P.C., dealing with process to compel appearance. Section 82 Cr.P.C. as it existed prior to the Act No. 25 of 2005 read as follows:-

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 specific 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 home-stead 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.

But Sub-sections (4) and (5) were incorporated by way of Act No. 25 of 2005 which read as follows:-

Section 82(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, 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 subsection (4) as they apply to the proclamation published under sub-section (1).]

12. Terms of the above sub-sections are mandatory and imperative and a proclamation cannot be issued without first issuing the legal warrant of arrest. The abovesaid provisions of Section 82 Cr.P.C. will come into operation when Court has reason to believe that the accused has absconded and will not obey the summons or in case where the accused person or whom the summons is duly served for appearance, fails to appear without offering any excuse for non-appearance, a warrant of arrest can be issued but where warrant of arrest has been issued against an accused person and there are reasons to believe that the accused person has absconded or is concealing himself to avoid the execution of the warrant, the Court may publish a written proclamation requiring such person to appear before it and may attach his property. If the accused person fails to appear before the Court as required by the proclamation, the property attached would be at the disposal of State Government and could be sold. Section 83 Cr.P.C. deals with the attachment of property of a person absconding. Section 84 Cr.P.C. deals with claims and objections to attachment. Another important Section 85 Cr.P.C. provides relaxation to a person absconding, by laying down a provision that the property could be released from attachment if he appears within two years from the date of attachment. Provisions of Sections 83 and 85 Cr.P.C. indicate that these stringent provisions are made to exert pressure on the, accused and compel him to appear before the Court, in case he wants that he should not be deprived of his property. Section 86 Cr.P.C. provides for an appeal against an order rejecting the application for restoration of attached property.

13. The term 'absconding' though not defined as per Statute but in *Jayendra Vishnu Thakur v. State of Maharashtra and another* : (2009) 7 SCC 104, it has been defined on the basis of dictionary meanings that the primary meaning of the word is, "to hide". It means to depart secretly or suddenly, especially to avoid arrest, prosecution or service of process. A Court is required to exhibit total application of mind to arrive at a definite finding regarding an accused "absconding".

14. The abovesaid provisions indicate that objective of the Code is to secure the presence of the accused. A person who avoids summons, warrants or proclamation, can be punished for offence under Section 174 IPC which already existed in the Code providing a simple imprisonment for a term which may extend to six months or a fine which may extend to one thousand rupees or with both. Section 174 IPC as already existing prior to the incorporation of Section 174A IPC, is reproduced hereunder:-

Section 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.

Section 174-A IPC was incorporated vide Section 44 by Act No. 25 of 2005 w.e.f. June 23, 2006 enhancing the punishment for nonappearance in respect to a proclamation under Section 82 Cr.P.C. of Act No. 2 of 1974. Section 174A IPC incorporated vide Section 44 of Act No. 25 of 2005, reads as follows:-

Section 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. Section 229A IPC was also incorporated by Act No. 25 of 2005 providing punishment for failure of the terms of the bail or bail bonds. Section 229A IPC is reproduced hereunder:-

229A. Failure by person released on bail or bond to appear in Court.-Whoever, having been charged with an offence and released on bail or on bond without sureties, fails without sufficient cause (the burden of proving which shall lie upon him), to appear in Court in accordance with the terms of the bail or bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Explanation.-The punishment under this section is-(a) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he has been charged-; and

(b) without prejudice to the power of the Court to order forfeiture of the bond.

15. It is further important to refer to Section 22, of Act No. 25 of 2005 which had made addition in Schedule I making the offence under Section 174A IPC cognizable and non-bailable. Relevant part of Amended Schedule I is reproduced as under:-

16. A perusal of the above said provisions indicate that Section 174 of IPC was meant to punish a person who failed to fulfill his obligation to attend in person or by an agent in the Court of justice and to undergo simple imprisonment for a term which may extend to 6 months or with a fine which could extend to one thousand rupees or with both if he omitted to attend at a particular place or time. The offences have been classified for the purpose of punishment under Section 174 IPC. The offences which fall in para 1 of Section 174 entail simple imprisonment for one month or fine of Rs. 500/- or both; offence is non-cognizable, bailable and triable by Magistrate but not compoundable. Similarly the offences falling under para 2 pertaining to proclamation, entails simple imprisonment for 6 months or fine

of Rs. 1000/- or both. Offence is non-cognizable, bailable and triable by Magistrate but not compoundable. For a person absconding, for whom a proclamation had been published under Section 82 (1), (2) and (3) Cr.P.C., could be punished for simple imprisonment for a period of six months or with a fine of Rs. 1000/- under Section 174 IPC. The offence under Section 174 IPC is non-cognizable as it also falls within the ambit of Section 195 Cr.P.C. laying down that no Court shall take cognizance for any offence punishable under Sections 172 to 178 of IPC (both inclusive), as per Section 195 (1) (a) (i) except on the complaint in writing by a Court.

17. Vide the amendment by Act No. 25 of 2005, after Section 174 IPC, another Section 174A IPC and another Section 229A IPC was incorporated vide Sections 44 (b) and 44 (c) respectively w.e.f. June 23, 2006, simultaneously also adding Section 82 (4) and (5) Cr.P.C. vide Section 12 of amendment Act No. 25 of 2005. Section 12 of Act No. 25 of 2005 dealing with amendment of Section 82 Cr.P.C. has already been reproduced in first para of this judgment.

18. The provisions of Section 82(4) and (5) Cr.P.C. if read in isolation and construed literally, tend to give a meaning that it is only when a proclamation under Section 82(1) Cr.P.C. in respect of a person accused of offences specified in Section 82(4) Cr.P.C. stands issued and that accused fails to appear at a specified place and time required by proclamation, the Court may pronounce him a “proclaimed offender” and make a declaration to that effect. Section 82 (5) Cr.P.C. which has been incorporated shows that the declaration which is made by the Court under Section 82(4) Cr.P.C. would be governed by the provisions of sub-sections (2) and (3) of Section 82 Cr.P.C., pertaining to declaration made by the Court and shall apply as it applies to a proclamation published under Section 82 (1) Cr.P.C.

18A. Sub-section (4) of Section 82 Cr.P.C., if read, independent of the other sub-sections of Section 82 Cr.P.C. and provision of Section 174A IPC and Section 174 IPC, is capable of being misconstrued to mean that it is only that accused person, facing trial, only for offences mentioned in Section 82(4), who can be declared “proclaimed offender”- after publication under Section 82(1)(2) and (3) Cr.P.C. giving immunity to the/other absconders from being declared “proclaimed offenders”. In that imaginary situation, it appears to be a relaxation clause. But if subsections (4) and (5) of Section 82 Cr.P.C. are read along with sub-sections (1) and (2) of Section 82 Cr.P.C. and Scheme of other provisions of Cr.P.C. and Sections 174 and 174A IPC, following the Rule of “Contextual construction”, and “Harmonious Construction”, it would avoid the risk of making interrelated provisions becoming otiose or devoid of meaning. The intention of legislation to make stringent penal provisions of Section 174A IPC for securing the presence of an absconder by providing 7 years imprisonment for avoiding summons, warrants or proclamation, under Section 82 (1) Cr.P.C. can not be ignored while construing Section 82(4) Cr.P.C. One can not negate the effect of Section 174-A IPC and render it redundant by misconstruing the Section 82(4) Cr.P.C. to mean that it is meant to provide relaxation to offenders of offences not covered under Section 82(4) Cr.P.C.

19. As discussed hereinabove, the law of Criminal Procedure is complimentary to the substantive criminal law. The Indian Penal Code together with other penal laws constitutes

the substantive criminal law. The substantive criminal law by its very nature cannot be self-operative. A person committing an offence under IPC or any other law is not automatically stigmatized and punished. Any offender cannot receive sentence by mere fact that he has committed the offence under IPC or any other law. It is for this reason the procedural criminal law has been designed to see that the process of administration and enforcement of the substantive criminal law is followed. The legislature in its wisdom had opted to include substantive criminal offences under Sections 174A and Sections 229A IPC, providing graver punishment for non-appearance pursuant to publication under Section 82 (1) and Section Cr.P.C. and violating bail bonds, respectively. In order to enforce the same, the legislature had to amend the procedural law in consonance with the classification of offences in Section 174-A IPC. It is a settled principle of law that in the absence of procedural law, the substantive criminal law could be almost worthless. (Refer to 37th report of Law Commission). Without the enforcement mechanism, the threat of punishment held out to the law breakers by the substantive criminal law would remain empty formality in books. In order to implement the substantive offence under Section 174A IPC Part II, the addition under Section and (5) Cr.P.C. was required to be made.

HARMONIOUS CONSTRUCTION OF SECTION Cr.P.C. WITH SECTION 174A (I) IPC and 174A (II) IPC:

20. When a question arises as to the meaning of a certain provision' in a statute, it is not only legitimate but proper to read that provision in context to the following:-

- i) the statute as a whole;
- ii) the previous State of the law;
- iii) other statutes in perimateria;
- iv) the general scope of the statute; and
- v) the mischief that it was intended to remedy.

In *Candda Robut Leader v. R.*, (1898) AC 735 referred to in *M. Pentiah and others v. Muddala Veeramallappa* : AIR 1961 SC 1107, following the rule of interpretation that statute has to be read as a whole to find out real intention of legislation, Lord Davey, observed

Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter.

The abovesaid principle of construction is spoken as 'ex visceribus actus'. It helps in avoiding any inconsistency either within a Section or between two different Sections or provisions of the same statute. Said rule has been adopted in following judgments:

1. *News Papers Ltd. v. Industrial Tribunal U.P.* : AIR 1957 SC 532.

2. Gamman India Ltd v. UOI, : AIR 1974 SC 960;
3. Mysore State Road Transport Corporation v. Mirza Khasim Ali Beg, : AIR 1977 SC 747
4. Calcutta Gaz Co. v. State of West Bengal : AIR 1962 SC 1044;
5. Sultana Begum v. Prem Chand Jain : AIR 1997 SC 1006.
6. Bala Ram Kumawat v. Union of India : (2003) 7 SCC 628: AIR 2003 SC 3268.
7. O.P. Singla v. Union of India : (1984) SCC 450.
8. Kailash Chand v. Mukandi Lal, 2002 (1) R.C.R. (Rent) 146 : AIR 2002 SC 829.

On a conspectus of the abovementioned case law following principles are discernible and can be enumerated for adopting to interpret the scope and applicability of Amendment Act No. 25 of 2005:-

- (1) It is the duty of the courts to avoid a head-on clash between two Sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.
- (2) The provisions of one Section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.
- (3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "harmonious construction".
- (4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.
- (5) To harmonise is not to destroy any statutory provision or to render it otiose.

21. In Tehsildar Singh v. State of U.P : 1997 (2) R.C.R. (Civil) 8; AIR 1959 SC 1012, it was observed that "the principle that the statute must be read as a whole is equally applicable to different parts of the same section. The section must be construed as a whole whether or not one of the parts is a saving clause or a proviso. In Faqir Chand v. Shree Chand Deo Sugar Mills Ltd. : AIR 1962 SC 1543 and Mohan Singh Singhania v. Union of India, 1992 (1) S.C.T. 546 : AIR 1992 SC 1, the said rule of construction was reiterated by observing that an elementary rule of construction of a section is to be made of all the parts together and it is not permissible to omit any part of it; the whole section should and must be read together. Sub-sections in a section must be read as parts of an integral whole and as being interdependent, each portion throwing light, if need be, on the rest. General Clauses Act

1897, Section 3 (61) defines “sub-section’ as “A section of the Section in which the word occurs.”

22. In *Seaford Court Estates v. Ashu*, (1949) 2 All E.R. 155p. 164 (CA), Denning L.J. said, that “a Judge must not alter the material of which the’ Act is woven but he can and should iron out the creases. It was approved in *Bangalore Water Supply v. A. Rajappa*, : AIR 1978 SC 548 and *State of Tamil Nadu v. Kodaikanal Motor Union* : AIR 1986 SC 1173.

23. In order to appreciate whether Section 82(4) Cr.P.C. intends to carve out an exception for certain special sections mentioned therein or the said section provides stringent penalty for substantive offences’ mentioned therein under Section 174A IPC, Part II, the provisions of Section 82(4) Cr.P.C. have to be construed not only in consonance with the other subsections but also in context to the provisions of Section 174-A IPC. The rule of “context” permits reference to other statutes in perimateria i.e. statutes dealing with the same subject matter of forming part of the same system. It is settled rule of interpretation that a statute must be read as a whole as words are’ to be understood in their ‘context’. A Court will reject an interpretation which will defeat the plain intention of the legislature, even though there may be some inexactitudes in language used.-

24. Since the material words “proclaimed offender” used in Section 82(4) Cr.P.C., if read in isolation are capable of bearing two different constructions, it will be appropriate in the present case to adopt the legal principles in *Hey-don’s* case which is also called “mischief rule” or “purposive construction”. *Heydon’s* rule was established in England in 1584 in *Heydon’s* case, (1584) 3 Co. Rep. 7a, p. 7b: 76 ER 637. The said rule is a sound rule of construction. The said rule lays down that for sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st-What was the common law before the making of the Act;

2nd-What was the mischief and defect for which the common law did not provide;

3rd-What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth; and

4th-The true reason of the remedy.

The said rule further provides that thereafter the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro private commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico. The said rule was followed in *Bengal Immunity Co. v. State of Bihar*,: AIR 1955 SC 661 and in number of other cases. The recent one in *National Insurance Co, Ltd v. Baljit Kaur* : 2004 (1) R.C.R. (Civil) 722 : (2004) 2 SCC 1: AIR 2004 SC 1340.

25. The application of abovesaid rules of interpretation requires reference to Sections 174,

174A IPC and 229 A IPC and the procedural law in Section 40, existing procedures under Section 38, Section 40, Section 41 (c) and Section 82 (1) (2) and (3) and Section 83 Cr.P.C. for fair construction of the amendment of Section 82(4) and (5) Cr.P.C.

26. A judicial notice of the fact can be taken from a number of petitions challenging orders of declaration of “proclaimed offenders” that a large number of persons evade their appearance before the Courts. The scheme of Criminal Procedure Code and substantive laws makes an endeavour to compel the appearance of the accused person, by adopting the various provisions of summons, warrants, proclamation, bail bonds, provided in Chapter VI and under Chapter XXXIII (provisions pertaining to bail bonds) read with the powers of the police to arrest persons as per provisions of Section 41 Cr.P.C. Apprehending an accused with the aid of the public and other officials is provided in Chapter IV under Sections 37, 38, 39, 40 and 41 Cr.P.C.

27. Section 174 IPC made, non-attendance, in obedience of an order of public servant or a Court, an offence which entailed very meager punishment of simple imprisonment for one month or six months in case the disobedience was pertaining to summons of public servant or of a Court of justice respectively. The offence was also non-cognizable but, the intention of the legislation to provide stringent punishment for disobedience to proclamation is writ large from the provisions of Section 174A IPC, which has been incorporated vide Section 44 of Act No. 25 of 2005. Even Section 195 Cr.P.C. prohibited the taking of cognizance of an offence under Section 174 IPC without there being a complaint by the Magistrate but Section 174A IPC lays down punishment for failure to appear at a specified place and at the specified time as required by a proclamation published under Section 82 (1) Cr.P.C., providing punishment with imprisonment for a term which may extend to 3 years or with fine or with both but where the declaration has been made under sub-Section 82(4) of Cr.P.C., declaring him a proclaimed offender, he shall be punishable for imprisonment for a term which may extend to 7 years and shall also be liable to fine. The offences which are mentioned in sub-section 82(4) Cr.P.C. have been considered to be serious offences whereas the offences which fall under Section 82(I) Cr.P.C. have been considered to be less serious offences as is depicted from the punishment prescribed. Section 174A IPC consists of two paras. The first para deals with proclamation for all the offences whereas para 2 provides for imprisonment for 7 years for the offences which fall under Section 82(4) Cr.P.C. Objective of Section 174A IPC is to enhance the punishment already prescribed under Section 174 IPC. Prior to the incorporation of Section 174A IPC, non-attendance in obedience of a summons, notice, warrant or proclamation was punishable only to the extent of one month or six months. In case a warrant against an absconding accused is issued and he conceals himself to avoid execution of the warrant, the Court concerned was entitled to publish a written proclamation requiring him to appear at a specific place and a specific time within a period of 30 days of the date of publication. The mode of publication is prescribed in Section 82 (2) Cr.P.C. After the proclamation, if an accused did not appear, two arrangements were provided i.e. for non-appearance pursuant to summons issued by any public servant, sentence of simple imprisonment of one month or fine of Rs. 500/- but if the summons, notice or order of proclamation was issued by a Court of justice, the punishment had been provided for a simple imprisonment for six months or a fine of Rs. 1000/-. Under Section 174A IPC, two types of punishments have been prescribed. As per

para 1 of Section 174A IPC, if a person fails to appear at a specified place and specified time as required by proclamation published under Section 82 (I) Cr.P.C., he would be punishable with imprisonment for a term of 3, years or with a fine or with both but where a declaration has been made for specific offences reflected in Section 82(4) Cr.P.C. pronouncing him a proclaimed offender, an accused shall be punished with an imprisonment for a term which may be extended to 7 years. The offence under Section 174 IPC was bailable and non-cognizable but Section 174-A IPC has been incorporated to enhance the rigour of punishment of non-appearance pursuant to publication. The first part of Section 174-A deals with absconding persons for all the offences and provides punishment for non appearance pursuant to proclamation under Section 82 (1) Cr.P.C. for a period of 3 years but if the offences in which a person is accused of offences/charges of serious offences contained in Section 82(4), the harsh punishment of 7 years of RI with fine has been prescribed. The intention of the legislature can be gathered from the addition of Section 229A IPC. Section 229A IPC provides punishment of imprisonment for one year for a person, who is charged of an offence and has been released on bail or on bond without sureties, in case of his failure to appear in the Court as per terms of the bail or bond. As Section 174A IPC and Section 229A IPC have prescribed punishment for absconding persons in case of “non-appearance” in response to “proclamation” under Section 82 Cr.P.C. or on account of violation of terms of bail bonds respectively, reading of Section 82(4) Cr.P.C. independent of Section 174A IPC would not be permissible.

CLARIFICATION OF DISTINCTION IN “PROCLAIMED PERSON” AND PROCLAIMED OFFENDER”:

28. Learned counsel for the petitioner-Mr. Tanvir Ahmed Mir has placed strong reliance on judgment of this Court in Rahul Datta’s case (supra) to contend that a person on evading execution of warrants of arrest under particular sections of Cr.P.C. in Section 82(4) Cr.P.C. can only be declared a ‘proclaimed offender’ whereas a person under other provisions of IPC and the laws can be declared to be a ‘proclaimed person in terms of Section 82(1) Cr.P.C.

29. I have carefully considered the judgment cited by learned counsel for the petitioner. To consider the classification of an accused to be a ‘proclaimed offender’ and to be a ‘proclaimed person, the nomenclature adopted in the said judgment is that a ‘proclaimed person’ is that who falls under Section 82(1) Cr.P.C. and ‘proclaimed offender’ is that who falls under Section 82(4) Cr.P.C. I am of the considered opinion that nomenclature of a person to be ‘proclaimed person’ or a ‘proclaimed offender will not diminish the rigour of Section 174A IPC to the accused persons falling-under Section 82(4) Cr.P.C. as has been sought to be interpreted by counsel for the petitioner. If Section 82(4) Cr.P.C. is read alongwith Section 174A Part I and Part II of IPC, it makes it clear that act of “non-appearance” of an accused, of all offences, except the offences which are mentioned in Section 82(4) Cr.P.C., pursuant to a proclamation, at a particular place, would be punishable for a period of 3 years RI but an act of “non-appearance ” of accused person who falls under Section 82(4) Cr.P.C. would be liable for stringent punishment of rigorous imprisonment of 7 years under Section 174A Part II IPC. The intention of incorporation of Section 82(4) becomes apparent when it is read alongwith part II of Section 174A IPC, The practical aspect of incorporation of Section 82(4) Cr.P.C. is required to be considered in the

present case rather than adopting a theoretical approach.

The distinction between a “proclaimed person” under Section 82(1) Cr.P.C. and “proclaimed offender” under Section 82(4) Cr.P.C. as reflected from the reading of entire Section 82 Cr.P.C. is only in context to the mode of declaration of an absconder as “proclaimed offender”. The distinction of mode to be adopted by Court is apparent from reading of Section 82(3) Cr.P.C. and Section 82(4) Cr.P.C. A “statement in writing” by Court issuing the proclamation to the effect that proclamation was duly published on a specific day in manner specified in clause (i) of subsection (2) shall be ‘conclusive evidence’ that requirement of Section 82(1) and (2) Cr.P.C. have been complied with, and that the proclamation was published on such day.

30. But in case publication under Section 82(1) Cr.P.C. is in respect of a “proclaimed person” accused of specific offences mentioned in Section 82(4) Cr.P.C. an additional obligation is cast upon the Court i.e. it becomes imperative for the Court, issuing publication “to make an enquiry” as it thinks fit, for its satisfaction that an accused of specified offences mentioned in Section 82(4) Cr.P.C., has failed to appear at specified place and time required by the publication under Section 82(1) and (2) Cr.P.C. This additional requirement of formal enquiry and satisfaction by Court is necessary as the offences mentioned in Section 82(4) Cr.P.C. are punishable under Section 174A Part II for rigorous imprisonment of 7 years with fine. A person who has suffered a proclamation under Section 82(1) Cr.P.C. even if he is considered as a ‘proclaimed person’ he would, be liable for certain statutory restrictions and liabilities, irrespective of being named as a “proclaimed person”. An absconder offender, after publication under Section 82 Cr.P.C. is liable for the following constraints and disabilities, like a “proclaimed offender”:-

- i) it would be lawful for any police officer under Section 24 of Police Act V of 1861, to lay any information before the Magistrate pertaining to any person committing an offence and enter his name in the absconder Register in the police station and include his name in the sheet;
- ii) a police official if he is an investigating officer can issue “hue and cry” notice similar to one required under Punjab Police Rules 23.18. He will prepare list of absconder’s moveable and immoveable property duly attested by the Headman or Patwari by attaching one copy to the case diary;
- iii) The investigating officer is entitled to apply for warrant of arrest to the Court having jurisdiction under Section 24 of Police Act when the identity of the absconder is established, by giving probable abodes of the absconder;
- iv) The SHO or Investigating officer is entitled to make simultaneous applications for proclamation under Section 82 Cr.P.C. and also for attachment of the property under Section 83 Cr.P.C. alongwith list of property prepared which can be a farad of patwari in case of land and a plan of the house in case of a house. A Magistrate can issue simultaneous order of proclamation under Section 82 Cr.P.C. and attachment under Section 83 Cr.P.C. but proceedings of attachment can only be issued by the Court which had issued

a valid proclamation under Section 82 Cr.P.C. A 'proclaimed person' or -'proclaimed offender' irrespective of the nomenclature, immediately after the proclamation is published, becomes a 'proclaimed offender' and his name must be entered in part I of Police Station Register No. 10 as laid down in Punjab Police Rules 22.54 and his history sheet can be opened. If said person is resident of another District, the information is required to be sent to the SHO concerned and SP of that District. Information of the proclamation is required to be given to Headman and Watchman of the village concerned.

v) All the steps taken by the local Police to secure the arrest of absconders and to initiate proceedings under Sections 82, 83 Cr.P.C. are required to be noted in case diaries, other relevant records and Registers of police station and registers of Prosecuting Branch.

vi) When a person whose finger print slip is on the record absconds, that information is required to be sent to Finger Print Bureau.

vii) The names of all the absconders irrespective of their classification after proclamation under Section 82 (1) or 82(4) Cr.P.C. is to be entered into in a list which will be kept in the office of every police station and a duplicate thereof requires to be displayed in the police station notice board.

viii) The property of a 'proclaimed person' or 'proclaimed offender' is liable to be attached and shall be at the disposal of the-Government. It can be sold after 6 months of the date of attachment unless it is subject to speedy and natural decay in which case it will be sold earlier for the benefit of the owner as per Section 85 (2) Cr.P.C. If a claim is filed under Section 84 Cr.P.C. against attachment by another person, the Magistrate, before auction must first dispose of the claim.

ix) If a proclaimed offender appears within the time specified in the proclamation, the Court shall release the property attached as per Section 85(1) Cr.P.C.

x) The claims and objection regarding attached property by third person or persons within six months from the date of attachment can be raised on the ground that the claimant/ objector has interest in such property and that such interest is not liable to attachment' The Court ordering attachment shall enquire into and allow or disallow such claim or objection as per Section 83 (3) Cr.P.C. A person whose claim is disallowed can file a suit within one year to establish his right as per Section 83 (4) Cr.P.C.

xi) The attached property can be restored to a 'proclaimed person' or 'proclaimed offender' within a period of two years of attachment subject to his proving, to the satisfaction of the Court that he did not abscond or had no notice of proclamation as per Section 85 (3) Cr.P.C.

xii) Harboursing a proclaimed person or proclaimed offender is an offence under Section 216 IPC.

xiii) In case there is no immediate prospect of arresting a 'proclaimed person' or 'proclaimed offender' after completion of investigation, challan can be presented under

Section 173 Cr.P.C. and on request, the Court competent to try may record the depositions of witnesses under Section 299 Cr.P.C. The police would be required to submit a challan in case absconder is arrested. If proceedings under Section 299 Cr.P.C. have already been recorded, then a prayer should be made to take out that file. Police files of all cases in which proceedings under Section 299 Cr.P.C. have been taken, that are required to be kept in the Record Room of S.P. office in separate bundle in cloth of a distinctive colour and this bundle shall be labeled "50 years bundle". The names of all the police stations concerned shall be entered on the label. Such annual bundles of Files year wise are required to be kept together in separate part of the record room as per the Punjab Police Rules 27.39.

xiv) Judicial files in which proceedings have been recorded by the Court under Section 299 Cr.P.C. are kept in record room of the District Magistrate for a period of 50 years and the files are not destroyed.

xv) Arrest of a "proclaimed offender" or "proclaimed person" is permissible without warrant by police officer under Section 41 (c) Cr.P.C.

32. Every Officer employed in connection with the affairs of the village as described in Section 40 (2) (iii) Cr.P.C. and every person residing in a village is duty bound to forthwith communicate the nearest Magistrate or to the officer incharge of the nearest police station, whichever is nearer, any information which may be in respect to the whereabouts of any accused, convict or proclaimed offender as per Section 40 (1) (b). The expression 'proclaimed offender' in Section 2 (ii) of Section 40 of Cr.P.C. does not make a distinction between the 'proclaimed person' and 'proclaimed offender'. The list given is extensive and not exhaustive and is not intended to include only the offenders who have allegedly committed offences under the Sections mentioned in Section 40 (2) (ii) Cr.P.C. It is not out of place to observe here that the definition of proclaimed offender in Section 40 (2) (ii) Cr.P.C. is only for the purpose of including the offenders who can be arrested by officer employed in connection with the affairs of the village and other persons residing in the village for the acts which, if committed, would be offence punishable under specified' offences under Section 40(1) (c) Cr.P.C. Section 40 (2) (ii) Cr.P.C. does not define 'proclaimed offender' in context to the provisions of Section 82 (4) Cr.P.C., but include the offenders who have committed offences mentioned in Section 40 (1) (c) Cr.P.C. which incidentally coincide with offences mentioned in Section 82 (4) Cr.P.C. and qua whom a duty is imposed upon every person to provide information to the nearest Magistrate or to the officer incharge of nearest police station.

33. An absconder who has suffered a proclamation under Section 82 (1) or (4) Cr.P.C. can be arrested without warrant by a police officer under Section 41 (c) Cr.P.C.

34. I have considered all the judgments cited by counsel for the petitioner as mentioned in the first part of the judgment i.e. Satinder Singh's case (supra), Likhma Ram's case (supra), Sukhwinder Singh's case (supra), Baldev Singh's case (supra), Balihar Dharmi's case (supra), Sarabjit Rai's case (supra). In all the cited judgments, the scope of Section 82 (4) Cr.P.C. has not been considered but in majority of the cases the order of declaring a person as 'proclaimed offender' has been set aside by giving a direction to the accused persons to

appear before the Court concerned and seek concession of bail. The above said judgments, though, do not deal with the scope of Section 82 (4) Cr.P.C. have permitted the accused persons to join the stream of process of law by enabling them to appear before the Court and face proceedings in accordance with law. In erudite judgment of *Rajiv Vs. State of Haryana*, CrI. Misc. No. M-30146 of 2011, decided on October 12, 2011, Ranjit Singh, J., the provisions of Section 82 (4) Cr.P.C. has been construed in context to the provisions of Section 174 A IPC and it has been held that a person falling under Section 82 (4) Cr.P.C. can be declared a proclaimed offenders, distinguishing the judgment of *Satinder Singh's* case (supra), observing that said judgment does not lay down a binding precedent.

35. In case judgments, in *Satinder Singh's* case (supra) and other cases are read in context to Section 82 (4) Cr.P.C. it would tend to mean that an accused absconder of Sections 420, 498-A or 376 IPC etc. who disobeys and violates the directions in a warrant or proclamation, issued by a Court can not be declared "proclaimed offender" by the Courts, but a person who is accused of offences under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of Indian Penal Code mentioned in Section 82 (4) can only be declared proclaimed offender.

36. Whether said interpretation is legal and valid deserves to be answered in negative in view of the harmonious construction of Section 82 (4) Cr.P.C. as discussed hereinabove.

"Offender" is a person who is alleged to have committed offence as per definition of "offence" in Section 2 (n) of Cr.P.C. i.e. committed any act or omission made punishable by any law for the time being in force .

"Proclaimed Offender" would be any offender who has suffered declaration after proclamation under Section 82 (1) or Section 82 (4) Cr.P.C. according to Section 82 (2), (3) and Section 82 (5) Cr.P.C.

37. A conjoint reading of sub-section 82 (4) Cr.P.C. with other sub- sections clarifies that "A statement in writing" by a Court issuing the proclamation to the effect that proclamation was duly published on specified day in the manner specified in clause (i) of Sub-Section 2 of Section 84 Cr.P.C. shall be "conclusive evidence" that requirement of Section 82 (1) and (2) Cr.P.C. have been complied with and that the proclamation was published on such day. But in case publication under Section 82 (1) Cr.P.C. is in respect of a proclaimed person accused of specified offences mentioned in Section 82 (4) Cr.P.C., it would be imperative for a Court to make an enquiry as it thinks fit for its satisfaction that an accused of any of the offences mentioned in Section 82 (4) Cr.P.C. has failed to appear at specified place and time required by the publication under Section 82 (10) and (2) Cr.P.C. That enquiry need not be a detailed enquiry but should be limited to the expression of opinion that Court is satisfied that the accused is absconding or concealing himself to avoid execution of warrants and that after proper publication of proclamation as per Sections 82 (2) (i) or (ii) Cr.P.C., has failed to appear at specified place and time after notice of thirty days. This safeguard is provided because stringent punishment is provided in Section 174 A Part II IPC.

38. But if a person is alleged to be offender under any other Section of IPC of any other law and has absconded by avoiding execution of warrants or proclamation he would be liable to lesser punishment under Section 174 A Part I IPC after publication of proclamation under Section 82 (1) Cr.P.C. in manner mentioned in Section 82 (2) Cr.P.C. after statement in writing under Section 82 (3) Cr.P.C.

39. Section 82 (4) Cr.P.C. cannot be construed to hold that absconders not falling under Section 82 (4) Cr.P.C. cannot be declared proclaimed offenders or that they are not subject to the penalties and liabilities enshrined under law. The absconder not falling under Section 82 (4) Cr.P.C. are liable under Section 174A Part 1 IPC and absconders under Section 82 (4) Cr.P.C. are liable under Section 174 A Part II IPC after publishing of proclamation.

40. In view of above, it is held that provisions of Section 82 (4) Cr.P.C. incorporated by amendment of Act No.25 of 2005 do not lay down that the persons accused of having committed offences mentioned under Section 82 (4) Cr.P.C. can only be declared a proclaimed offender. It is further held that any person who has been declared a proclaimed person under Section 82 (1) Cr.P.C. or under Section 82 (4) Cr.P.C. will be at par for the purpose of all the liabilities and consequences attached to a person declared proclaimed offender.

41. It is further clarified that order of declaring a persons a proclaimed offender cannot be challenged solely on the ground that the offence alleged to have been committed by him is not included in the sections mentioned in Section 82 (4) Cr.P.C. This judgment, however, will not effect the rights of a proclaimed offender to challenge the proceedings of declaring him a proclaimed offender if statutory violation of any of the provisions of issuance of warrant or proclamation is established in individual cases.

42. It is also clarified that the moment a proclaimed offender is arrested or he appears at the place and time required by the Court or surrenders before the Court or authority issuing warrants or proclamation, as the case may be, the order of declaration of proclaimed offender would cease to be operative.

43. The petitioner has not been able to establish any statutory violation of provisions of Section 82 Cr.P.C.

44. Petition is dismissed.