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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

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CRM-M-2558-2024 (O&M)

Date of decision: 10.09.2024

Sanjay Kumar**...Petitioner****Versus****Rajinder Kumar****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Deepinder Brar, Advocate
for the petitioner.

None for the respondent.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 of Cr.P.C. for quashing of order dated 18.09.2023, passed by the Sub Divisional Judicial Magistrate, Gidderbaha in case complaint case bearing No. NACT/289/2019, titled as ***Rajinder Kumar vs. Sanraj Hospitality Pvt. Ltd. and others***, whereby the petitioner had been declared a proclaimed person.

2. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the aforesaid complaint has been filed by the respondent-complainant on false and frivolous allegations against him. The trial Court, vide order dated 04.01.2020, had summoned all the four accused including petitioner to face trial in the aforesaid complaint. However, thereafter, in the wake of Covid-19 pandemic, the case was not taken up on subsequent dates. Thereafter, when the matter was taken up, notices/warrants were issued against the petitioner but he was never served

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with the same and had been declared a proclaimed person without following the proper procedure prescribed under Section 82 Cr.P.C. The petitioner has already appeared before the trial Court in compliance with the order passed by this Court on 29.01.2024 and has been released on bail by the trial Court, vide order dated 12.02.2024. Hence, it is urged that the impugned order, declaring the petitioner as a proclaimed persons, is liable to be set aside.

3. There is no representation on behalf of the respondent-complainant.

4. I have heard learned counsel for the petitioner at considerable length and have also gone through the material placed on record.

5. On giving due deliberations to the contentions as raised by learned counsel for the parties and on an overall perusal of the orders passed by the trial Court from the date of initiating proceedings under Section 82 Cr.P.C. as against the petitioner till the date of declaring him a proclaimed person, I am of the considered opinion that the impugned order dated 18.09.2023 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

6. There are catena of judgments of different High Courts discussing the requirements necessary for issuance and publication of proclamation against an absconder under Section 82 Cr.P.C. and for declaring him as a proclaimed person/offender. These requirements have been discussed from time to time in ***Rohit Kumar Vs. State of Delhi : 2008 CrL J. 2561***, ***Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366***, ***Devender Singh Negi Vs. State of U.P. : 1994 CrL LJ (Allahabad HC) 1783***, ***Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826, Shokat Ali***

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Vs. State of Haryana : 2020(2) RCR (Criminal) 339, Dilbagh Singh Vs. State of Punjab : (P&H) 2015 (8) R.C.R. (criminal) 166, Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550, Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368, Birad Dan Vs. State : 1958 CriLJ 965, Negi alias Debu Vs. State of U.P. and another, 1994 Cri LJ 1783 and Pal Singh Vs. The State : 1955 CriLJ 318.

7. After going through the material placed on record as well as the copies of zimini orders passed by the trial Court, it is revealed that after summoning of the accused in the aforesaid complaint, the case was adjourned several times in wake of Covid-19 situations. Thereafter, the case was taken up on 17.02.2021. Thereafter, on subsequent dates, notices were issued to the petitioner but the same could not be served upon him. Thereafter, on 03.06.2023, since the non-bailable warrants issued against the petitioner were received back unserved, the trial Court had ordered for issuance of fresh proclamation against him under Section 82 of Cr.P.C. for 18.09.2023, on which date, the petitioner was declared a proclaimed person, due to his non-appearance before the trial Court. However, a perusal of the aforesaid complaint, which is annexed with the petition as Annexure P-1, reveals that the complainant, instead of giving residential address of the petitioner, had given the address of his company. As such, it can reasonably be presumed that the process never reached the petitioner at his ordinary place of residence and hence, he had no occasion to conceal himself. As such, the action of the trial Court by switching to the proclamation proceedings under Section 82 Cr.P.C. can itself be stated to be bad in the eyes of law. Reliance in this context can be

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placed upon *Manjit Kaur vs. State of Punjab : 2013 SCC Online (P&H) 8663*.

8. Further, on a perusal of the impugned order itself, it is revealed that while passing the same, the trial Court has not mentioned as to when the proclamation was executed, whether the statement of the serving police official was recorded or not and as to whether the mandatory period of 30 days had completed or not. It is well settled that the Court issuing the proclamation has to make a statement in writing in its order that the proclamation was duly published on a specified day in a manner specified in Section 82(2)(i) of the Cr.P.C. Such statement in writing by the Court is declared to be conclusive evidence that the requirements of Section 82 of Cr.P.C. have been complied with and that the proclamation was published on such day. Reliance in this regard can be placed upon *Birad Dan Vs. State : 1958 CriLJ 965*.

9. Accordingly, in view of the discussion as made above and also in view of the ratio of law as laid down in above cited authorities, the present petition is allowed and the impugned order dated 18.09.2023, passed by the Sub Divisional Judicial Magistrate, Gidderbaha in case complaint case bearing No. NACT/289/2019, titled as *Rajinder Kumar vs. Sanraj Hospitality Pvt. Ltd. and others*, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

10. However, the petitioner is directed to surrender before the Court concerned within a period of four weeks, subject to order for grant of anticipatory bail, if any passed on his petition to be filed under the relevant provisions of BNSS. In the absence of any order for grant of anticipatory bail

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and on such surrender, the petitioner shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court in accordance with law.

11. Needless to observe that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall be bound to dispose of the same expeditiously and that nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

12. Till the appearance of the petitioner before the trial Court, his arrest shall remain stayed.

13. It is made clear that in case the petitioner fails to appear before the trial Court within a period of four weeks from today, this petition shall be deemed to be dismissed.

10.09.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No