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

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CRM-M-4845-2024 (O&M)
Date of decision: 09.08.2024

Neel Kamal Kaur ...Petitioner

Versus

Ujjagar Singh and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Gopal Sharma, Advocate
for the applicant-petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. CRM-31746-2024

Allowed as prayed for.

Documents are taken on record as Annexures P-23 to P-25.

2. CRM-M-4845-2024 (O&M)

The instant petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of Criminal Complaint No. 186 of 2022 (Annexure P-7), titled as *Ujjagar Singh vs. Neel Kamal Kaur*, filed under Section 138 of the Negotiable Instruments Act (*for short 'N. I. Act'*) and also for quashing of summoning order dated 09.05.2022 (Annexure P-9) and order dated 16.01.2023 (Annexure P-17), whereby the petitioner had been declared a proclaimed offender in the aforesaid complaint.

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3. At the very outset, learned counsel for the petitioner has restricted his prayer only to the extent of quashing of impugned order dated 16.01.2023, whereby the petitioner had been declared a proclaimed offender.

4. It is submitted by learned counsel for the petitioner that the aforesaid complaint was filed at her back at that time, she was in Canada. The petitioner was married to the grandson of respondent No. 1/complainant and he was well aware about the ordinary place of residence of the petitioner. However, still the complainant had filed the aforesaid complaint with a wrong address of the petitioner and no efforts were made to serve the petitioner at her ordinary place of residence in Canada. Hence, it is argued that the petitioner had been declared a proclaimed person without following the proper procedure prescribed under Section 82 Cr.P.C. and it is urged that the impugned order is liable to be set aside.

5. Learned State counsel has argued that the petitioner, having knowledge about the pendency of the complaint, had intentionally avoided her appearance before the trial Court, therefore, she was rightly declared a proclaimed offender. It is, accordingly, urged that the petition is liable to be dismissed.

6. I have heard learned counsel for the parties and have also gone through the material placed on record.

7. 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 offender, I am of the considered opinion that the impugned order dated

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16.01.2023 suffers from illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

8. 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***, ***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 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***.

9. After going through the material placed on record as well as the copies of zimni orders passed by the trial Court, it is revealed that on 19.11.2022, since the non-bailable warrants issued against the petitioner were received back unserved, the trial Court had ordered for issuance of proclamation against her for 16.01.2023. However, a perusal of the statement of serving police official HC Nishant Kumar shows that the proclamation was never read over in accordance with Section 82(2) of Cr.P.C. in some conspicuous place of the town wherein the petitioner ordinarily used to reside.

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Hence, it was in violation of the statutory provisions of Section 82(2) of Cr.P.C.. It is well settled that the three sub-clauses (a) to (c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. Reliance in this regard can be placed upon *Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368* and order dated 30.04.2024 passed by this Court in *CRM-M-19419-2024, titled as Jagdeep Singh vs. State of Haryana*. Since the valid publication of proclamation is not proved, hence the impugned order can also not be sustained.

10. Further, it has also come on record that the petitioner had been residing in Canada since 20.08.2019, whereas the aforesaid complaint was filed on 09.05.2022, by respondent No. 1, by giving the address of her matrimonial house. Admittedly, the petitioner is grand daughter-in-law of respondent No. 1/complainant and by no stretch of imagination, it can be said that he was not aware of the fact that the petitioner had been residing in Canada. However, still, he had not chosen to provide correct address of the petitioner so that she could be served with notices/warrants, issued by the trial Court. More so, there is nothing on record to show that any efforts whatsoever were made by the Court to ask the complainant the address of the petitioner of the country, where process could be sent to her. No letter to Ministry of External Affairs qua service of notice/warrants/proclamation against the petitioner is shown to have been written by the trial Court. As such, it can reasonably be presumed that the process never reached the petitioner and hence, she had no occasion to conceal herself. As such, the action of the trial

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

11. 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 partly allowed and the impugned order dated 16.01.2023, passed by the Judicial Magistrate First Class, Fatehgarh Sahib in case titled as Ujjagar Singh vs. Neel Kamal Kaur, filed under Section 138 of N. I. Act, whereby the petitioner had been declared a proclaimed offender is hereby quashed along with all the subsequent proceedings having emanated therefrom.

12. However, the petitioner is directed to surrender before the Court concerned within a period of six weeks, subject to order for grant of anticipatory bail, if any passed on his petition to be filed under Section 438 of the Cr.P.C. In the absence of any order for grant of anticipatory bail 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.

13. 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.

14. Till the appearance of the petitioner before the trial Court, her arrest shall remain stayed.

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

16. The petitioner is granted liberty to file a fresh petition seeking quashing of aforesaid complaint as well as summoning order, if so advised.

09.08.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No