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

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CRM-M-17689-2024 (O&M)

Date of decision: 25.07.2024

Lovepreet Kaur

...Petitioner

Versus

State of Union Territory of Chandigarh

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. R. Kartikeya, Advocate
for the petitioner.

Mr. Manish Bansal, Public Prosecutor, Chandigarh.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of order dated 04.01.2024, passed by the Judicial Magistrate First Class, Chandigarh in case titled as ***State vs. Vikas Joshi and others***, arising out of FIR No. 204 dated 22.06.2020, registered under Sections 448, 380, 405, 120-B, 506 and 34 of IPC at Police Station Sector 39, Chandigarh, 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 her counsel that the petitioner has been falsely implicated in this case. The petitioner was never served with the summons/bailable/non-bailable warrants issued against her by the trial Court as she had shifted to her village. She had been declared a proclaimed person without following the proper procedure prescribed under Section 82 Cr.P.C. Even direction has been issued for registration of FIR under Section 174-A of

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IPC. The petitioner is ready to join the proceedings before the trial Court. Hence, it is urged that the impugned order is liable to be set aside.

3. Learned Public Prosecutor has argued that the petitioner was having knowledge about the pendency of the trial and had intentionally avoided his appearance before the trial Court. Therefore, she was rightly declared a proclaimed person. Hence, it is urged that the petition is liable to be dismissed.

4. I have heard learned counsel for the parties 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 her a proclaimed person, I am of the considered opinion that the impugned order dated 04.01.2024 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, 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***

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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 on 22.02.2023, 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 01.05.2023. Thereafter, due to non-appearance of the petitioner, fresh proclamation was issued on 11.10.2023 for 04.01.2024.

A plain reading of sub-section (1) of Section 82 of Cr.P.C. shows that if a Court has 'reason to believe' that a person, despite issuance of warrant against him, is concealing or absconding himself so that such warrant remains unexecuted, the Court may publish a written proclamation requiring the person to appear at a specified place and time, which is not less than 30 days from the date of publishing of such proclamation. The use of expression 'so that warrant cannot be executed further implies that the person must be attributed with the knowledge that such warrant has been issued against her and her concealment is intentional. However, a perusal of the aforesaid orders shows that while issuing proclamation under Section 82 of Cr.P.C., the trial Court has neither recorded the reasons for non-execution of warrants nor has recorded its proper satisfaction that it was *prima facie* satisfied that the petitioner has absconded or is concealing herself so that the warrant of arrest,

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previously issued, cannot be executed, despite reasonable diligence. Hence, there is clear non-compliance of the provisions of Section 82(1) of Cr.P.C. Reliance in this regard can be placed upon *Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366* and *Devender Singh Negi Vs. State of U.P. : 1994 Crl LJ (Allahabad HC) 1783*.

8. Further, a perusal of the report of the serving police official shows that the proclamation was not publicly read in some conspicuous place of the village, where she was supposed to be residing. Hence, the same was in violation of Section 82(2) of Cr.P.C. The three sub-clauses (a)- (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. : 1973CriLJ 1368*.

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 04.01.2024, passed by the Judicial Magistrate First Class, Chandigarh in case titled as *State vs. Vikas Joshi and others*, arising out of FIR No. 204 dated 22.06.2020, registered under Sections 448, 380, 405, 120-B, 506 and 34 of IPC at Police Station Sector 39, Chandigarh, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

10. Since the impugned order, declaring the petitioner a proclaimed person, stands quashed, the FIR under Section 174-A of IPC may not be registered against the petitioner as it is informed by learned State counsel that it is not registered so far.

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11. 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 her 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.

12. 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.

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

14. 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.

25.07.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No