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

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CRM-M-40354-2017 (O&M)
Date of decision: 31.07.2024

Hardeep Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. M. S. Sachdev, Advocate
for the petitioner. (Through VC)

Mr. A. S. Samra, AAG, Punjab.

Mr. Om Malhan, Advocate
for respondent Nos. 2 and 3.

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 22.08.2009, passed by the Judicial Magistrate First Class, Jalandhar in case titled as *State vs. Jaspal Singh and others*, arising out of FIR No. 128 dated 22.04.2007, registered under Sections 307, 326, 323, 324, 341, 148 and 149 of IPC at Police Station Maqsudan, District Jalandhyar, whereby the petitioner had been declared a proclaimed offender.
2. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the petitioner has been falsely implicated in this case. After registration of the FIR, the petitioner was granted concession of anticipatory bail by the Court of learned Additional Sessions Judge, Jalandhar, vide order dated 09.08.2007. However, during the course of

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investigation, the petitioner had gone abroad. He was never served with any summons/bailable/non-bailable warrants issued by the trial Court at his ordinary place of residence in abroad.

3. Learned State counsel, assisted by learned counsel for respondent Nos. 2 and 3, 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, he was rightly declared a proclaimed offender. 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 him a proclaimed offender, I am of the considered opinion that the impugned order dated 22.08.2009 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***

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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.

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 since the non-bailable warrants issued against the petitioner were received back unserved, the trial Court, on 13.06.2009, had ordered for issuance of proclamation against him for 22.08.2009, on which, date due to non-appearance of the petitioner, he was declared a proclaimed offender by passing the impugned order by the trial Court. The zimini orders passed by the trial Court simply reveal that the warrants issued against the petitioner had been received back unexecuted without satisfying itself as to whether he was reported to have gone abroad or his whereabouts were otherwise not known. The petitioner has taken a plea that he was granted concession of anticipatory bail and during the pendency of the investigation, he had gone abroad. However, it is revealed from the perusal of record that no efforts whatsoever were made by the Court to ask the complainant about the address of the petitioner of the country, where process could be sent to him. 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, he had no occasion to conceal himself. As such, the action of the trial Court by switching to the proclamation

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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*. More so, there is nothing on record to show that the State had either complied with the statutory provisions of Section 105 Cr.P.C. or were not required to comply with such provisions before the declaration of the petitioner a proclaimed offender.

8. Further, vide order dated 26.07.2022, passed by this Court, the petitioner was directed to appear before the trial Court and on his appearance, it was directed that the trial Court would release him on interim bail. In compliance thereof, the petitioner had appeared before the trial Court and had been released on interim bail on furnishing personal/surety bonds to the satisfaction of the trial Court.

9. In view of the above, the present petition is allowed and the order dated 26.07.2022 is made absolute. The impugned order dated 22.08.2009, passed by the Judicial Magistrate First Class, Jalandhar in case titled as *State vs. Jaspal Singh and others*, arising out of FIR No. 128 dated 22.04.2007, registered under Sections 307, 326, 323, 324, 341, 148 and 149 of IPC at Police Station Maqsudan, District Jalandhyar, whereby the petitioner had been declared a proclaimed offender, is quashed with all consequential proceedings arising therefrom.

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Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No