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

120

CRM-M-31162-2024 (O&M)
Date of decision: 05.07.2024

Harchand Singh Sidhu ...Petitioner

Versus

State of Punjab ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Kamaldeep S. Sidhu, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

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 15.05.2015, passed by the Judicial Magistrate First Class, Jagraon in case titled as *State vs. Gurmukh Singh and others*, arising out of FIR No. 115 dated 04.10.2013, registered under Sections 406, 420 and 120-B of IPC at Police Station Raikot, District Ludhiana (Rural), whereby the petitioner had been declared an absconder.
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. The petitioner had filed a petition for grant of anticipatory bail before this Court but the same was dismissed as withdrawn, vide order dated 28.02.2014 passed in CRM-M-36432-2013. Although, subsequent to registration of the FIR, the petitioner had travelled to Canada in 2014 as he was not keeping well and was in absolute depression but he has not

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permanent abode there and is willing to come back to India and join the Court proceedings. It is further submitted that the petitioner had been declared an absconder without following the proper procedure prescribed under Section 82 Cr.P.C. Hence, it is urged that the impugned order is liable to be set aside.

3. Learned State counsel, who has advance notice of the petition, 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 an absconder. 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 an absconder, I am of the considered opinion that the impugned order dated 15.05.2015 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***

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and others Vs. Emperor : AIR 1943 Patna 366, Devender Singh Negi Vs. State of U.P. : 1994 Cri 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.

7. After going through the material placed on record as well as the zimini orders passed by the trial Court, it is revealed that on 29.01.2015, since the non-bailable warrants issued against the petitioner were received back unserved as he was living abroad, the trial Court had ordered for issuance of proclamation against him for 08.04.2015. A bare perusal of the order dated 29.01.2015 shows that the trial Court before ordering for publication of proclamation has not recorded its proper satisfaction that the petitioner had absconded or was concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence, which was in violation of the provisions of Section 82(1) of Cr.P.C. Reliance in this regard can be placed upon *Rohit Kumar Vs. State of Delhi : 2008 Cri. J. 2561.*

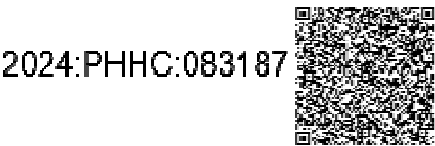
8. Further, on a perusal of order dated 08.04.2015 (Annexure P-4), it is revealed that fresh proclamation was ordered to be issued against the petitioner for 05.05.2015 as the proclamation issued vide order dated

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29.01.2015 had not been received back in any form. On 05.05.2015, the proclamation, which was issued for 08.04.2015 previously, had been received back and not the proclamation issued for the said date i.e. 08.04.2015. However, while relying upon the previous proclamation, as published by the serving official for 08.04.2015, the learned trial Court adjourned the case for 15.05.2015 for awaiting the presence of the petitioner by observing that the period of 30 days had not elapsed. In my considered opinion, once fresh proclamation was ordered to be issued for 05.05.2015, vide order dated 08.04.2015, then the proclamation so published on 08.04.2015 qua the previous date could not be taken into consideration and the learned trial Court erred in doing so. More so, even while presuming that the proclamation issued for 05.05.2015 was published on 08.04.2015, still, since the statutory period of 30 days had not been proved to be granted to the petitioner as per provisions of Section 82(1) of Cr.P.C., therefore, the said provision had been proved to be violated as a specified time not less than 30 days is required to be given to the accused from the date of publishing such proclamation which is mandatory in nature. Reliance in this regard can be placed upon ***Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826*** and ***Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339***.

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 15.05.2015, passed by the Judicial Magistrate First Class, Jagraon in case titled as ***State vs. Gurmukh Singh and others***, arising out of FIR No. 115 dated 04.10.2013, registered



under Sections 406, 420 and 120-B of IPC at Police Station Raikot, District Ludhiana (Rural), whereby the petitioner had been declared an absconder, 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 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.

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.

05.07.2024

(MANISHA BATRA)
JUDGE

Waseem Ansari

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No