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

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CRM-M-31932-2024 (O&M)
Date of decision: 15.10.2024

Vishal Singh **...Petitioner**

Versus

State of Haryana and others **...Respondents**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. D. K. Prajapati, Advocate
for the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of FIR No. 29 dated 29.05.2015, registered under Sections 148, 149, 323, 325, 452 and 506 of IPC at Police Station Naggal, District Ambala (Annexure P-1) along with all the subsequent proceedings arising therefrom including order dated 02.11.2016 (Annexure P-2), passed by the Judicial Magistrate First Class, Ambala, whereby he had been declared as proclaimed person.

2. At the very outset, it may be mentioned that vide order dated 31.07.2024, learned counsel for the petitioner has restricted his arguments only to the extent of quashing of order dated 02.11.2016, whereby the petitioner had been declared as proclaimed person.

3. 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 was never served with the

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summons/warrants issued by the trial Court at his ordinary place of residence. He had been declared as proclaimed person 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.

4. Learned State counsel 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 as proclaimed person. Hence, it is urged that the petition is liable to be dismissed.

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

6. 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 as proclaimed person, I am of the considered opinion that the impugned order dated 02.11.2016 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

7. 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***,

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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.

8. 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 23.08.2016, since the non-bailable warrants issued against the petitioner on previous dates were received back unserved, the trial Court had ordered for issuance of proclamation against him for 14.09.2016, thereby giving him only 21 days' time to appear before it, which means that he was not granted statutory period of 30 days to cause his appearance before the trial Court. Hence, the same was in clear violation of the provisions of Section 82(1) Cr.P.C., as per which, a specified time of 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. When the case was taken up on 14.09.2016, the proclamation was received executed but the case was adjourned to 02.11.2016 awaiting the appearance of the petitioner as the statutory period of 30 days had not elapsed.

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However, while adjourning the case to 02.11.2016, the trial Court failed to consider the fact that it could not have extended the time by simply adjourning the case as a fresh proclamation was required to be published once the period between issuance of publication of proclamation and the specified period of hearing was less than 30 days. Reference in this context can be made to ***Dilbagh Singh Vs. State of Punjab (P&H) : 2015 (8) R.C.R. (criminal) 166.***

10. Further, a perusal of the statement of the serving police official reveals that the proclamation was neither affixed at a conspicuous public place nor it was read over in some conspicuous place of the town or village in which the petitioner was supposed to be residing. As per Section 82 (2) of the Cr.P.C.. for publication, the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house. 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. : 1973 CriLJ 1368.***

11. On a perusal of orders dated 21.11.2015 and 18.01.2016, it is revealed that the non-bailable warrants issued against the petitioner were received back with a report that he was residing abroad. However, no letter to

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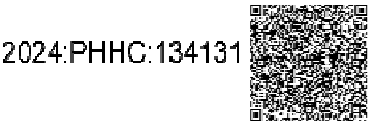


Ministry of External Affairs qua service of notice/warrants/proclamation against the petitioner is shown to have been written by the trial Court. As such, it can reasonably be presumed that the process never reached the petitioner and hence, he had no occasion to conceal himself. As such, the action of the trial Court by switching to the proclamation 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*.

12. 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 02.11.2016, passed by the Judicial Magistrate First Class, Ambala in the proceedings under the aforesaid FIR, whereby the petitioner had been declared as proclaimed person, is quashed with all consequential proceedings arising therefrom.

13. 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 482 of BNSS. 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.

14. 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.

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

16. 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.

15.10.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

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