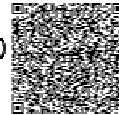


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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

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CRM-M-35827-2024 (O&M)

Date of decision: 25.11.2024

Gurdeep Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Harpreet Singh Jakhal, Advocate
for the petitioner.

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

Ms. Kiranjeet Kaur, Advocate
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioners under Section 482 of the Code of Criminal Procedure (*for short* 'Cr.P.C.') for quashing the Criminal Complaint bearing No. COMI/19/2017, filed under Sections 419, 420, 467, 468, 471 and 120-B of IPC, titled as ***Kala Singh vs. Gurdeep Singh and others***. The prayer has also been made for quashing of order dated 25.01.2023, passed by the Sub Divisional Judicial Magistrate, Jalalabad in the aforesaid case, whereby petitioner No. 1 had been declared a proclaimed person as well as for quashing of judgment of conviction dated 19.07.2023 qua petitioner No. 2 along with all the subsequent proceedings therefrom in view of compromise dated 13.07.2024, arrived at between the parties.

2. After arguing for some time, learned counsel for the petitioners has restricted his arguments only to the extent of quashing of order dated

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25.01.2023, whereby petitioner No. 1 had been declared a proclaimed person and has submitted that the present petition may be dismissed as withdrawn qua other reliefs sought by the petitioners. Ordered accordingly.

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 the aforesaid complaint. It is further submitted that petitioner No. 2, after facing full length trial, had been convicted by the learned trial Court, vide judgment dated 19.07.2023. However, now a compromise has been arrived at between the parties and a compromise deed has been reduced into writing. Otherwise also, the petitioner was residing in Canada at the time of filing of the aforesaid complaint and issuance of notice against him. He was never served with any notice/warrants issued against him. He had been declared a 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 counsel for respondent No. 2 has admitted to the factum of compromise entered into between the parties and has submitted that the complainant has no objection if the impugned order dated 25.01.2023 is quashed by this Court.

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 a proclaimed

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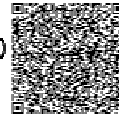


person, I am of the considered opinion that the impugned order dated 25.01.2023 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

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***, ***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 vide order dated 13.07.2022, the learned trial Court by observing that the notice issued against the petitioner had been received back unserved with the report that he had gone to Canada and he could not be summoned in ordinary manner passed the order for procuring his presence by way of publication in the newspaper titled as 'The Tribune' for 10.08.2022. Thereafter, the publication charges had not been deposited till 04.11.2022. On deposit thereof, publication was

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ordered for 25.01.2023, vide order dated 21.12.2022 and on 25.01.2023, the petitioner was declared a proclaimed person by observing that he did not come in the Court despite publication having been received back effected. A perusal of this order shows that neither date of publication has been mentioned nor the name of the newspaper is reflected.

9. As per Section 82 of Cr.P.C., if any Court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation. Such proclamation must be publicly read in some conspicuous place of the town or village in which such person ordinarily resides; it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; a copy thereof shall be affixed to some conspicuous part of the Court-house; the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides. A bare reading of the aforementioned provisions of Section 82 of Cr.P.C. clearly shows that the Court *may also* order for publication in a daily newspaper simultaneously with issuing proclamation in accordance with Section 82(2)(ii) of Cr.P.C. and cannot solely opt for publication in the newspaper in view of Section 82(2)(iii) of Cr.P.C. However, in the present case, the learned trial Court instead of complying with the provisions of Section 82 of Cr.P.C. in its true spirit has only ordered for publication in a newspaper and on the basis of the same has

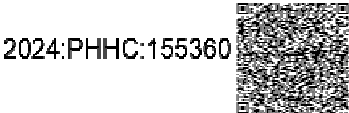
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declared the petitioner a proclaimed person. More so, it was in due knowledge of the learned trial Court that petitioner was residing in Canada but there is nothing on record to demonstrate the statutory provisions of Section 105 of Cr.P.C. were complied with. 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 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.***

10. 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 25.01.2023, passed by the learned trial Court in aforesaid complaint, whereby petitioner No. 1 had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

11. However, petitioner No. 1 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.



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 petitioner No. 1 before the trial Court, his 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.
15. The petitioners are granted liberty to file a fresh petition with regard to their other prayers.

25.11.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes