

2024:PHHC:104537



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

123

CRM-M-35768-2024 (O&M)
Date of decision: 13.08.2024

Maneer Ahmed ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Deepak Agnihotri, Advocate
for the applicant-petitioner.

MANISHA BATRA, J. (Oral)

1. CRM-32363-2024

Allowed as prayed for.

Documents are taken on record.

2. CRM-M-35768-2024 (O&M)

The instant petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of order dated 26.05.2023, passed by the Judicial Magistrate First Class, Ferozepur in case titled as *Gurkirat Singh vs. Maneer Ahmed*, arising out of Criminal Complaint bearing No. NACT/1035/2021, filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), whereby he had been declared a proclaimed person.

3. At the very outset, learned counsel for the petitioner has restricted his argument only to the extent of quashing of impugned order dated 26.05.2023, whereby the petitioner had been declared a proclaimed person.

2024:PHHC:104537



4. 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. The petitioner was never served with any notice/summons/warrants issued by the trial Court. 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.

5. I have heard learned counsel for the petitioner 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 person, I am of the considered opinion that the impugned order dated 26.05.2023 suffers from 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, 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***

2024:PHHC:104537



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 zimni orders passed by the trial Court, it is revealed that on 03.04.2023, since despite issuance of non-bailable warrants, the petitioner did not appear before the trial Court, therefore, the trial Court had ordered for issuance of proclamation against him for 26.05.2023, to be published in the newspaper 'Pioneer'. On 26.05.2023, due to non-appearance of the petitioner, he was declared a proclaimed person by the trial Court by passing the impugned order. The petitioner is stated to be serving in BSF and currently posted at Shillong, Assam and at the relevant time, he was posted at Barmer Rajasthan. A careful perusal of the record also shows that on 27.08.2021, it was noticed by the trial Court that the petitioner is the resident of Barmer, Rajasthan. However, there is nothing on record to suggest that he was ever served with the notice/warrants issued by the trial Court at his ordinary place of residence at Barmer, Rajasthan before issuance of proclamation against him. 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

2024:PHHC:104537



this context can be placed upon ***Manjit Kaur vs. State of Punjab : 2013 SCC Online (P&H) 8663.***

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 26.05.2023, passed by the Judicial Magistrate First Class, Ferozepur in case titled as ***Gurkirat Singh vs. Maneer Ahmed***, arising out of Criminal Complaint bearing No. NACT/1035/2021, filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), whereby he had been declared a proclaimed person, is hereby quashed along with all the subsequent proceedings having emanated 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.

2024:PHHC:104537



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.

13.08.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No