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

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CRM-M-37614-2024 (O&M)

Date of decision: 08.11.2024

Saleem

...Petitioner

Versus

State of U.T., Chandigarh

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sohrab Dhanda, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 of Cr.P.C. seeking quashing of order dated 02.12.2023 (Annexure P-6), passed by the learned Judicial Magistrate First Class, Chandigarh in case titled as ***Dharambir Singh vs. Salim***, arising out of a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), whereby the petitioner had been declared a proclaimed person.

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 the aforesaid complaint. Although, initially he could not appear before the learned trial Court, due to which, proclamation proceedings under Section 82 of Cr.P.C. were initiated against him but subsequently, he appeared before the Court on 21.12.2022 and was granted concession of bail. Thereafter, the petitioner was appearing on each and every date but due to non-appearance of the petitioner, no effective proceeding could take place before the Court. However, the petitioner could not appear before the Court on

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20.07.2023, due to which, his bail was cancelled and non-bailable warrants were issued against him and eventually, he was declared a proclaimed person. It is further submitted that the petitioner was not served with any notice/warrants and 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.

3. I have heard learned counsel for the petitioner at considerable length and have also gone through the material placed on record.

4. 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 02.12.2023 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

5. 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***

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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.

6. 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 12.09.2023, since the non-bailable warrants issued against the petitioner were received back unserved, the trial Court had ordered for issuance of proclamation against him for 20.11.2023. However, a perusal of this order 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 CrL J. 2561.***

7. Further, a perusal of copies of zimni orders passed by the trial Court reveals that vide order dated 12.09.2023, proclamation was ordered to be issued for 20.11.2023. On 20.11.2023, the Magistrate concerned was on leave. The file was put up before the Duty Magistrate, who adjourned the case for 02.12.2023. On 02.12.2023, the petitioner was declared a proclaimed person by observing that despite issuance of proclamation and lapse of the mandatory period of 30 days, the petitioner had not appeared. It is evident that no proclamation was issued for 02.12.2023. Though, it is mentioned in the order dated 02.12.2023 that statement of serving constable had already been recorded and a copy of such statement as shown to be recorded on 20.11.2023

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has also been placed on record, however, there is no mention in the order dated 20.11.2023, as passed by the Duty Magistrate, of the fact that he had recorded any such statement. If the proclamation was issued for 20.11.2023 and the petitioner could not be declared a proclaimed person at that time, then it was incumbent upon the Magistrate concerned to issue fresh proclamation. However, it was not done so. Hence, it can be stated that proper procedure as prescribed under Section 82 of Cr.P.C. was not followed while declaring the petitioner as a proclaimed person.

8. 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 02.12.2023 (Annexure P-6), passed by the Judicial Magistrate First Class, Chandigarh in case titled as ***Dharambir Singh vs. Salim***, arising out of a complaint filed under Section 138 of the N. I. Act, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

9. 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, 2023. 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.

10. 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

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shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

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

12. 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.

08.11.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No