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

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CRM-M-36976-2024 (O&M)
Date of decision: 09.08.2024

Shonik Marhia and another ...Petitioners

Versus

Surinder Chauhan and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. K. S. Maangat, Advocate
for the applicant-petitioner.

MANISHA BATRA, J. (Oral)

1. CRM-32011-2024

Allowed as prayed for.

Documents are taken on record as Annexures P-4 to P-6.

2. CRM-M-36976-2024 (O&M)

The instant petition has been filed by the petitioners under Section 482 Cr.P.C. for quashing of order dated 10.08.2022 (Annexure P-2), passed by the Judicial Magistrate First Class, Chandigarh in case titled as *Surinder Chauhan vs. Mahesh Marhia and others*, arising out of Criminal Complaint No. 6520 of 2019, filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), whereby they had been declared as proclaimed offenders.

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3. The present petition has been filed by the petitioners on the grounds and it has been argued by their counsel that the petitioners have been falsely implicated in the aforesaid complaint. The petitioners were never served with any notice/summons/warrants issued by the trial Court. They had been declared proclaimed offenders 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. I have heard learned counsel for the petitioners 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 petitioners till the date of declaring them as proclaimed offenders, I am of the considered opinion that the impugned order dated 10.08.2022 suffers from 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 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***

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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 copies of zimni orders passed by the trial Court, it is revealed that on 04.01.2022, since the non-bailable warrants issued against the petitioners were not received back served, the trial Court had ordered for issuance of proclamation against them for 21.02.2022. Thereafter, on 21.03.2022, since the proclamation issued on 04.01.2022 was not received back, fresh proclamation was ordered to be issued for 13.05.2022. On 13.05.2022, again, fresh proclamation was ordered to be issued for 10.08.2022 and since the petitioners did not appear before the Court on 10.08.2022, they had been declared proclaimed offenders by passing the impugned order. However, a careful perusal of the record shows that on 06.01.2020, since the bailable warrants issued against the petitioners/accused persons were received back unserved, the complainant was directed to furnish latest address of the petitioners/accused persons, which in fact were never supplied by him and the trial Court kept on issuing further notices/warrants to the petitioners at their old addresses. There is nothing on record to show that the complainant had ever furnished the latest address of the petitioners in compliance of order dated 06.01.2020, so that warrants could have been issued to them at their ordinary place of residence. As such, it can reasonably be presumed that the

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process never reached the petitioners and hence, they had no occasion to conceal themselves. 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.***

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 10.08.2022 (Annexure P-2), passed by the Judicial Magistrate First Class, Chandigarh in case titled as ***Surinder Chauhan vs. Mahesh Marhia and others***, arising out of Criminal No. 6520 of 2019, filed under Section 138 of the N. I. Act, whereby the petitioners had been declared as proclaimed offenders, is hereby quashed along with all the subsequent proceedings having emanated therefrom.

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

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11. Till the appearance of the petitioners before the trial Court, their arrest shall remain stayed.
12. It is made clear that in case the petitioners fail to appear before the trial Court within a period of four weeks from today, this petition shall be deemed to be dismissed.

09.08.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>