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

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CRM-M-41431-2024 (O&M)
Date of decision: 29.08.2024

Rajender Kumar ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Aditya Sanghi, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for quashing of order dated 17.01.2023 (Annexure P-3), passed by the Sub Divisional Judicial Magistrate, Tohana in case titled as *M/s Baba Rice Soltex Traders vs. M/s Kunal Lal Rajinder Kumar*, arising out complaint bearing No. NACT-20-2018, filed under Section 138 of the Negotiable Instruments Act (*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 this case. A perusal of the aforesaid complaint would show that the address of the petitioner has wrongly been given as "Rajender

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Kumar Garg, son of Prabhu Dayal, C/o Opp. Street Manas Shiksha School, Nanak Dairy Road, Hodal, District Faridabad, Haryana”, whereas the correct address of the petitioner is “Rajender Kumar son of Shri Chand, Ward No. 2, behind Nanak Dairy, Water Works Colony, Hodal, Palwal” and due to that reason, the petitioner was never served with the notice/warrants issued by the trial Court at his ordinary place of residence. The petitioner 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 17.01.2023 suffers from 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***,

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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 CriLJ 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 zimni orders passed by the trial Court, it is revealed that on 02.09.2022, 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 14.11.2022. Thereafter, on 14.10.2022, fresh proclamation was issued for 05.12.2022, which was received back unserved and again on 22.11.2022, fresh proclamation was issued for 17.01.2023. Since the petitioner did not appear on 17.01.2023 despite execution of the proclamation, he was declared a proclaimed person by the trial Court by passing the impugned order. However, the petitioner has taken a plea that he was never served with the summons/warrants issued by the trial Court as his address was wrongly given in the aforesaid complaint by the complainant. In support of his claim, he has placed on record a copy of his Aadhar Card showing his correct address, as mentioned above. As such, it can reasonably be presumed that the process issued by the trial Court never reached the petitioner as even the father's name of the petitioner was mentioned as 'Prabhu Dayal' in the complaint, whereas the name of his father is 'Shri Chand'. Hence, the action of the trial Court by switching to the proclamation

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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.***

7. 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 17.01.2023 (Annexure P-3), passed by the Sub Divisional Judicial Magistrate, Tohana in case titled as ***M/s Baba Rice Soltex Traders vs. M/s Kunal Lal Rajinder Kumar***, arising out of complaint bearing No. NACT-20-2018, 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.

8. 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.

9. 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.

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

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11. 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.

29.08.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No