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

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CRM-M-41192-2024 (O&M)
Date of decision: 27.08.2024

Prithvi Nath Sharma ...Petitioner

Versus

Sat Parkash ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. D. S. Matya, 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 16.07.2024, passed by the learned Additional Sessions Judge, Gurugram in case titled as *Sat Parkash vs. Prithvi Nath Sharma*, bearing *CRA No. 489 of 2017*, arising out of the judgment dated 06.09.2017, passed by the Judicial Magistrate First Class, Gurugram in a complaint filed by the respondent under the Section 138 of the Negotiable Instruments Act (*for short N. I. Act*), whereby the petitioner had been declared a proclaimed person.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned complaint had been filed by the present respondent on the allegations that the present petitioner had taken a friendly loan of a sum of Rs. 5,00,000/- from him in August, 2013. To discharge his liability, the petitioner had issued a cheque for the above said sum in favour of the respondent on assurance that the same would be honoured upon its

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presentation. The respondent had presented the said cheque for realization but the same had been dishonoured with the remarks 'funds insufficient'. Despite issuance and receipt of a statutory notice, the petitioner failed to make payment of the amount of cheque and hence the aforementioned complaint had been filed.

3. On presentation of the complaint, preliminary evidence was recorded by the respondent and vide order dated 21.07.2014, the process was issued against the petitioner. He appeared in response to the notice. Notice of accusation under Section 138 of the N. I. Act was served upon him on 03.11.2014. The respondent produced oral as well as documentary evidence in support of his claim and thereafter, closed the same. The statement of the petitioner-accused was recorded under Section 313 of Cr.P.C. wherein he abjured his guilt and claimed to be innocent. In defence evidence, he examined one witness.

4. On considering the evidence produced on record as well as the contentions raised by both sides, the learned Judicial Magistrate held the petitioner guilty for commission of offence punishable under Section 138 of Act and he was sentenced to undergo simple imprisonment for a period of one year and simultaneously to pay fine of Rs. 70,00,000/- to the respondent-complainant.

5. Feeling aggrieved from the said order, the petitioner had filed an appeal before the Court of learned Additional Sessions Judge, Gurugram. The sentence of the petitioner had been suspended in that appeal. Subsequently, he absented himself. His bail was cancelled. He was declared a proclaimed person/absconder vide order dated 09.12.2019 and vide judgment dated

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19.12.2023, the appeal was dismissed. Aggrieved from the same, the petitioner had filed a revision petition bearing **CRR-32-2024** before this Court and vide order dated 24.07.2024, the said revision petition had been allowed by this Court and the matter was remitted to the appellate Court with a direction to restore the appeal to its original number, to give notice of the same to counsel for the respondent and then to hear the arguments after giving reasonable opportunity and decide the same afresh on merits.

6. Simultaneously, the complainant had also filed aforesaid appeal bearing **CRA-489-2017** before the appellate Court for enhancement of the sentence awarded to the petitioner by the trial Court and vide order dated 10.09.2019, passed by the appellate Court, the appeal preferred by the respondent was ordered to be clubbed with the appeal of the petitioner. However, as apparent from the record and as mentioned above, the appeal preferred by the petitioner was dismissed by the appellate Court on 19.12.2023 but the appeal preferred by the respondent was kept pending. Hence, it can be assumed that the both the appeals were segregated and taken up separately.

7. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the petitioner was regularly appearing before the appellate Court in both the appeal. However, since his appeal was dismissed by the appellate Court on 19.12.2023, he was under a *bonafide* impression that the appeal preferred by the respondent also stood disposed of. However, the appellate Court had issued multiple warrants against him, which were never served upon him. Hence, the petitioner had been declared a proclaimed person without following the proper procedure

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prescribed under Section 82 Cr.P.C. Hence, it is urged that the impugned order is liable to be set aside.

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

9. On giving due deliberations to the contentions as raised by learned counsel for the petitioner and on an overall perusal of the orders passed by the appellate 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 16.07.2024 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

10. 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*.

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11. After going through the material placed on record as well as the copies of zimini orders passed by the appellate Court, it is revealed that the aforesaid appeal was pending before the appellate Court and it was being adjourned by the appellate Court on multiple dates in the year 2020 due to outbreak of Covid-19 pandemic and thereafter, the matter had been adjourned for arguments on different dates and finally on 09.01.2024, the same was taken up and warrants were issued to the petitioner for 25.01.2024. Thereafter, on five consecutive dates, the warrants issued against the petitioner were received unexecuted. Therefore, on 15.04.2024, the appellate Court, by recording its satisfaction that the petitioner had been avoiding the arrest and execution of warrants, had issued proclamation for 07.05.2024. A perusal of order dated 15.04.2024 shows that the proclamation was issued by the appellate Court, requiring the petitioner to cause his appearance on 07.05.2024 before the Court concerned, which means that he was not granted statutory period of 30 days to cause his appearance before the appellate Court. Hence, the same was in clear violation of the provisions of Section 82(1) Cr.P.C., as per which, a specified time of not less than 30 days is required to be given to the accused from the date of publishing such proclamation which is mandatory in nature. Reliance in this regard can be placed upon ***Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826*** and ***Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339.***

12. More so, when the matter was taken on 07.05.2024, the proclamation issued against the petitioner was received back duly executed on 25.04.2024. However, since the mandatory period of 30 days had not elapsed, the case was adjourned to 16.07.2024. While adjourning the case to

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16.07.2024 to await the appearance of the petitioner as the statutory period of 30 days had not elapsed by then, the appellate Court failed to consider the fact that it could not have extended the time by simply adjourning the case as a fresh proclamation was required to be published once the period between issuance of publication of proclamation and the specified period of hearing was less than 30 days. Reference in this context can be made to ***Dilbagh Singh Vs. State of Punjab (P&H) : 2015 (8) R.C.R. (criminal) 166.***

13. 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 16.07.2024, passed by the learned Additional Sessions Judge, Gurugram in case titled as ***Sat Parkash vs. Prithvi Nath Sharma***, bearing CRA No. 489 of 2017, arising out of the judgment dated 06.09.2017, passed by the Judicial Magistrate First Class, Gurugram in a complaint filed under the Section 138 of the Negotiable Instruments Act, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

14. 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 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.

15. Needless to observe that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall

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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.

16. Till the appearance of the petitioner before the appellate Court, his arrest shall remain stayed.

17. It is made clear that in case the petitioner fails to appear before the appellate Court within a period of four weeks from today, this petition shall be deemed to be dismissed.

18. It is made clear that this order shall have no bearing on the order dated 24.07.2024 passed by this Court in **CRR-32-2024**.

27.08.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No