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

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CRM-M-42355-2024 (O&M)
Date of decision: 16.09.2024

Anant Singh ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Vikrant Rana, Advocate
for the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana

MANISHA BATRA, J. (Oral)

1. CRM-37497-2024

Allowed as prayed for.

Copies of interim orders are taken on record.

2. CRM-M-42355-2024 (O&M)

The instant petition has been filed by the petitioner under Section 528 of BNSS, 2023 for quashing of order dated 28.09.2023, passed by the Judicial Magistrate First Class, Gurugram in case titled as *State of Haryana vs.Saurabh Sharma and others*, arising out of FIR No. 27 dated 08.05.2021, registered under Sections 420, 467, 468, 471, 120-B of IPC and Sections 66 and 66-D of Information Technology Act, 2008 at Police Station Cyber Crime, Gurugram, whereby the petitioner had been declared a proclaimed person.

3. 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

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falsely implicated in this case. 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.

4. Learned State counsel, who has advance notice of the petition, has argued that the petitioner was having knowledge about the pendency of the trial and had intentionally avoided his appearance before the trial Court. Therefore, he was rightly declared a proclaimed person. Hence, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties 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 28.09.2023 suffers from material 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***, ***Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366***,

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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.

8. 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 13.03.2023, 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 01.07.2023. However, a bare perusal of the orders dated 13.03.2023 shows that the trial Court before ordering for publication of proclamation has not recorded its proper satisfaction that 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.***

9. Further, on a perusal of the copies of orders passed by the trial Magistrate, which have been placed on record, it is revealed that the proclamation was published for 01.07.2023. The executing Constable had published the same on 20.05.2023 for 01.07.2023. However, despite receipt of the proclamation on 01.07.2023, the trial Magistrate did not declare the

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petitioner as a proclaimed person and posted the case for 28.09.2023 without considering the fact that no direction had been issued and there was no order for appearance of the petitioner on 28.09.2023. Then on 28.09.2023, he was declared a proclaimed person. It is, therefore, apparent that while declaring the petitioner as a proclaimed person on 28.09.2023, the trial Magistrate did not follow the procedure as prescribed under Section 82 of Cr.P.C.

10. 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 28.09.2023, passed by the Judicial Magistrate First Class, Gurugram in case titled as ***State of Haryana vs. Saurabh Sharma and others***, arising out of FIR No. 27 dated 08.05.2021, registered under Sections 420, 467, 468, 471, 120-B of IPC and Sections 66 and 66-D of Information Technology Act, 2008 at Police Station Cyber Crime, Gurugram, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

11. 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 the provisions 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.

12. 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.

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

14. 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.

15. The petitioner, on appearance before the trial Court, shall supply his residence proof qua his permanent address, copies of PAN card and Adhar Card to the trial Court.

16.09.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No