

2024:PHHC:127694



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

126

CRM-M-44436-2024 (O&M)
Date of decision: 26.09.2024

Manmohan Singh ...Petitioner

Versus

State of Punjab ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Parminder Singh, Advocate
for the applicant-petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. CRM-37416-2024

Allowed as prayed for.

Documents are taken on record as Annexures P-8 to P-10.

2. CRM-M-44436-2024 (O&M)

The instant petition has been filed by the petitioner under Section 528 of BNSS for quashing of FIR No. 59 dated 28.08.2013, registered under Sections 452, 341, 323, 148 and 149 of IPC at Police Station Bholath, District Kapurthala along with all the subsequent proceedings having emanated therefrom including order dated 12.08.2014 (Annexure P-6), whereby the petitioner had been declared as proclaimed offender.

3. After arguing for some time, learned counsel for the petitioner has restricted his arguments only to the quashing of order dated 12.08.2014, whereby the petitioner had been declared as proclaimed offender.

2024:PHHC:127694



4. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. He was under a bonafide impression that he had been found innocent during the course of investigation and subsequently, he had settled in USA to earn livelihood. He was never served with any notice/summons/warrants issued by the trial Court at his ordinary place of residence in USA. 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.

5. Learned State counsel 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 as proclaimed offender. Hence, it is urged that the petition is liable to be dismissed.

6. I have heard learned counsel for the parties and have also gone through the material placed on record.

7. 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 12.08.2014 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

8. 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

2024:PHHC:127694



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.***

9. 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 29.05.2014, 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 05.07.2014. On 05.07.2014, the proclamation was received effected. However, since the period of 30 days had not elapsed, the matter was adjourned to 15.07.2014 awaiting the appearance of the petitioner. However, while adjourning the case to 15.07.2014, the trial 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) 166.8.***

2024:PHHC:127694



10. The petitioner has taken a plea that he was under a *bonafide* impression that he was found innocent during the course of investigation and thereafter he had left for USA in order to earn livelihood. He has placed on record photocopy of his passport as well as visa, issued by the USA authorities, showing that he had reached USA on 22.05.2014, i.e. much before being declared as proclaimed offender by the trial Court. However, there is nothing on record to show that any effort was made by the Court to obtain his address in USA and to serve him at his ordinary place of residence thereof. No letter to Ministry of External Affairs qua service of notice/warrants/proclamation against the petitioner is shown to have been written by the trial Court. As such, it can reasonably be presumed that the process never reached the petitioner and hence, he had no occasion to conceal himself. 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.***

11. 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 partly allowed and the impugned order dated 12.08.2014, passed by the trial Court in aforesaid case, whereby the petitioner had been declared as proclaimed offender, is quashed with all consequential proceedings arising therefrom.

12. 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.

13. 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.

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

15. 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. The petitioner shall also be at liberty to seek quashing of FIR by filing any fresh petition, if warranted.

26.09.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

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