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

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CRM-M-44705-2024 (O&M)
Date of decision: 09.09.2024

Gurjant Singh ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

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

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

Mr. Yogesh Jangra, Advocate
for respondent No. 2/complainant.

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 28.08.2014, passed by the Judicial Magistrate First Class, Malerkotla in case titled as *State vs. Ranjit Singh*, arising out FIR No. 169 dated 07.12.2009, registered under Sections 447, 431, 427, 506, 148, 149 of IPC and Section 13A of the Punjab Village Common Land Act at Police Station Sadar Malerkotla, Punjab, whereby the petitioner had been declared a proclaimed offender.
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. The petitioner never joined the investigation and challan was presented against him in his absence. The four co-accused,

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who faced full length trial, were convicted by the trial Court for commission of offences punishable under Sections 447, 427, 506, 148, 149 of IPC, vide judgment dated 27.11.2014. They had preferred appeal before the lower appellate Court and had been released on probation, vide judgment dated 15.04.2015. The petitioner was never served with the summons/warrants issued by the trial Court and had been declared a proclaimed offender without following the proper procedure prescribed under Section 82 Cr.P.C. More so, the matter has been amicably settled with respondent No. 2/complainant and a compromise deed dated 30.08.2024 has been reduced in writing. Hence, it is urged that the impugned order is liable to be set aside.

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

4. On the other hand, learned counsel for respondent No.2/complainant, who is appearing through power of attorney, has admitted to the factum of compromise arrived at between him and the petitioner and has submitted that the complainant has no objection if the present petition is allowed by this Court.

5. I have heard learned counsel for the parties at considerable length 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

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Cr.P.C. as against the petitioner till the date of declaring him a proclaimed offender, I am of the considered opinion that the impugned order dated 28.08.2014 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*, *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 08.07.2014, since the non-bailable warrants issued against the petitioner were received back unserved, the trial Court had ordered for issuance of proclamation against him under Section 82 of Cr.P.C. for 21.07.2014. A bare perusal of this order shows that the trial Court before ordering for publication of proclamation has not recorded its satisfaction much less proper satisfaction

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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 CrI. J. 2561.***

9. A perusal of order dated 08.07.2014 further reveals that the proclamation against the petitioner was issued for 21.07.2014, which means that the petitioner was granted only 13 days' time to cause his appearance before the trial 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.***

10. Further, a perusal of the statement of the serving police official HC Rajwinder Singh reveals that the proclamation was not read over in some conspicuous place of the town or village in which the petitioner was supposed to be residing. As per Section 82 (2) of the Cr.P.C.. for publication, the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house. The three sub-clauses (a)-(c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that

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there would be no valid publication of the proclamation unless all the three modes of publication are proved. Reliance in this regard can be placed upon ***Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368.***

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 allowed and the impugned order dated 28.08.2014, passed by the Judicial Magistrate First Class, Malerkotla in case titled as ***State vs. Ranjit Singh***, arising out FIR No. 169 dated 07.12.2009, registered under Sections 447, 431, 427, 506, 148, 149 of IPC and Section 13A of the Punjab Village Common Land Act at Police Station Sadar Malerkotla, Punjab, whereby the petitioner had been declared a 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 the relevant provisions 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.

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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.

09.09.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>