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

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CRM-M-46760-2024 (O&M)
Date of decision: 24.09.2024

Shiv Kumar ...Petitioner

Versus

State of Punjab ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Shiv Kumar Sharma, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 528 of BNSS for quashing of orders dated 13.09.2021, 22.11.2021, 21.03.2022 and 09.06.2022, passed by the Judicial Magistrate First Class, Baba Bakala Sahib in case titled as *Major Singh vs. Shiv Kumar*, arising out of case bearing number NACT-105-2018, filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), whereby proclamations have been issued against the petitioner as well as for quashing of order dated 20.09.2022, 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. The petitioner was never served with the summons/warrants issued by the trial Court and he had been declared a proclaimed person without following the proper procedure prescribed under

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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 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 20.09.2022 suffers from some 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***, ***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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6. 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 22.03.2021, 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 21.05.2021. However, a bare perusal of the orders dated 22.03.2021 shows that the trial Court before ordering for publication of proclamation has not recorded its satisfaction much less proper satisfaction 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.***

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 orders dated 13.09.2021, 22.11.2021, 21.03.2022 and 09.06.2022, passed by the Judicial Magistrate First Class, Baba Bakala Sahib in case titled as ***Major Singh vs. Shiv Kumar***, arising out of case bearing number NACT-105-2018, filed under Section 138 of the N. I. Act, whereby proclamations had been issued against the petitioner as well as order dated 20.09.2022, whereby the petitioner had been declared a proclaimed person, are 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

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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.

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.

24.09.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No