

2024:PHHC:149299



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

119+279

CRM-M-50310-2024 (O&M)
Date of decision: 13.11.2024

Jaswinder Singh ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Abhinav Singla, Advocate
for the petitioner.

Mr. A. S. Samra, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. CRM-43878-2024

Allowed as prayed for.

Documents are taken on record as Annexures P-10 and P-11.

2. CRM-M-50310-2024 (O&M)

The instant petition has been filed by the petitioner under Section 528 of BNSS, 2023 for quashing of order dated 24.12.2021 (Annexure P-6), passed by the learned Additional Chief Judicial Magistrate, Mansa in case titled as *State vs. Gurcharan*, arising out of FIR No. 54 dated 01.04.2021, registered under Sections 420, 465, 467, 468, 471, 120-B of IPC at Police Station City-II Mansa, District Mansa, whereby the petitioner had been declared a proclaimed offender.

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 falsely implicated in this case. The petitioner and two other co-accused were

2024:PHHC:149299



kept in Column No. 2 of the challan report. However, learned trial Court had issued warrant against the petitioner by observing that his presence was required, which was never served upon him. In fact, he was never served with any summons/warrants issued by the learned trial Court as he was not residing at the address given in the FIR. The petitioner had been declared a proclaimed offender without following the proper procedure prescribed under Section 82 Cr.P.C. The petitioner is ready to appear before the learned trial Court and join the Court proceedings. Hence, it is urged that the impugned order is liable to be set aside.

4. 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 learned trial Court. Therefore, he was rightly declared a proclaimed offender. 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 offender, I am of the considered opinion that the impugned order dated 24.12.2021 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

2024:PHHC:149299



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 learned trial Court, it is revealed that on 01.11.2021, 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 15.11.2021, which means that he was not granted statutory period of 30 days 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*.

2024:PHHC:149299



9. Further, when on 15.11.2021, the case was taken up, the statement of the serving police official was recorded to the effect that the proclamation was executed on 14.11.2021. However, since the statutory period of 30 days had not elapsed by then, the case was adjourned to 15.12.2021 awaiting the presence of the petitioner. However, while adjourning the case to 15.12.2021, 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.***

10. On a perusal of the statement of the serving police official, it is revealed that the proclamation was neither read over in some conspicuous place of the town or village in which the petitioner was supposed to be residing nor it was pasted at the conspicuous place of the Court complex. 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 there would be no valid publication of the proclamation unless all the three modes of publication are

2024:PHHC:149299



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 24.12.2021 (Annexure P-6), passed by the learned Additional Chief Judicial Magistrate, Mansa in case titled as *State vs. Gurcharan*, arising out of FIR No. 54 dated 01.04.2021, registered under Sections 420, 465, 467, 468, 471, 120-B of IPC at Police Station City-II Mansa, District Mansa, 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, 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.

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.

2024:PHHC:149299



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.

13.11.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No