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

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CRM-M-50743-2024 (O&M)
Date of decision: 15.10.2024

Bharat Aggarwal ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Aakash Juneja, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 582 of BNSS for quashing of order dated 21.09.2024, passed by the Judicial Magistrate First Class, Rohtak in case bearing No. NACT-1862/2021, titled as ***Dinesh Kalra vs. Bharat Aggarwal***, filed by respondent No. 2 under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), whereby the petitioner had been declared as 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 the aforesaid complaint. The petitioner was never served with the summons/warrants issued by the trial Court at his ordinary place of residence. He had been declared as 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.
3. I have heard learned counsel for the petitioner and have also gone through the material placed on record.

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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 as proclaimed person, I am of the considered opinion that the impugned order dated 21.09.2024 suffers from some infirmities 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.***

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 06.12.2023, since the non-bailable warrants issued against the petitioner were

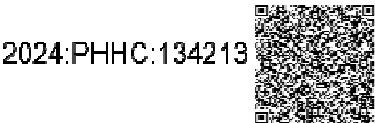
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received back unserved, the trial Court had ordered for issuance of proclamation against him for 21.05.2024. Thereafter, on 21.05.2024, since the serving police official did not appear before the Court, fresh proclamation was issued for 21.09.2024, on which date, the petitioner could not turn up before the trial Court despite execution of proclamation issued against him and was declared as proclaimed person. However, on a perusal of the order dated 06.12.2023, thereby issuing proclamation at the first instance, it is revealed that the trial Court before ordering for publication of proclamation has not recorded its 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 order dated 21.09.2024, passed by the Judicial Magistrate First Class, Rohtak in case bearing No. NACT-1862/2021, titled as ***Dinesh Kalra vs. Bharat Aggarwal***, filed by respondent No. 2 under Section 138 of the N. I. Act, whereby the petitioner had been declared as proclaimed person, is 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



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.

12. However, this relief will be subject to payment of cost of Rs. 20,000/-, to be given by the petitioner to respondent No. 2/complainant when he appears before the Court.

15.10.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No