

2024:PHHC:134149



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

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CRM-M-50731-2024 (O&M)
Date of decision: 15.10.2024

Bikramjit Singh @ Vikramjit @ Tiger ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Vikram Jeet Singh, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 582 of BNSS for quashing of order dated 17.09.2022, passed by the Judicial Magistrate First Class, Ludhiana in case titled as *State vs. Narinder Singh and others*, arising out of FIR No. 194 dated 19.10.2020, registered under Sections 307, 353, 186, 352, 506, 148, 149 of IPC, Sections 13-A, 3, 67 of the Gambling Act at Police Station Dugri, District Ludhiana, 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 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.

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3. Learned State counsel, who has advance notice of the petition, 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 person. Hence, it is urged that the petition is liable to be dismissed.

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

5. 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 17.09.2022 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

6. 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***

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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.

7. 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 06.08.2022, 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 17.09.2022. However, when the case was taken up on 17.09.2022, the petitioner could not turn up before the trial Court despite execution of proclamation issued against him, which resulted into his declaration as proclaimed person. On a perusal of the report of the serving police official ASI Himmat Ram, it is revealed 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 there would be no valid publication of the proclamation unless all the three modes of publication are proved. Reliance in this regard

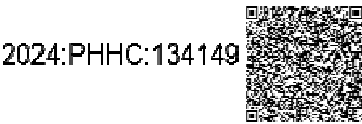
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can be placed upon ***Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368.***

8. Further, a perusal of order dated 06.08.2022 shows that the non-bailable warrants issued against the petitioner were received back with a report that his house was locked, consequent to which, the trial Court, while recording its satisfaction that the petitioner was intentionally avoiding service upon him by concealing himself, had resorted to initiate proceedings under Section 82 of Cr.P.C. against him. This approach of the trial Court cannot be stated to be aligned with true purpose and spirit of Section 82 of Cr.P.C. as it could have issued warrants for the next date as well in order to satisfy itself that the same could not be executed despite the house of the petitioner remaining open or the same was refused to be accepted by any of the family members. 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 hasty in nature.

9. 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 17.09.2022, passed by the Judicial Magistrate First Class, Ludhiana in case titled as ***State vs. Narinder Singh and others***, arising out of FIR No. 194 dated 19.10.2020, registered under Sections 307, 353, 186, 352, 506, 148, 149 of IPC, Sections 13-A, 3, 67 of the Gambling Act at Police Station Dugri, District Ludhiana, whereby the petitioner had been declared as proclaimed person, is quashed with all consequential proceedings arising therefrom.



10. 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.
11. 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.
12. Till the appearance of the petitioner before the trial Court, his arrest shall remain stayed.
13. 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.

15.10.2024

Waseem Ansari

(MANISHA BATRA)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No