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

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CRM-M-52844-2024 (O&M)
Date of decision: 23.10.2024

M/s Bansal Motors and others ...Petitioners

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Neeraj Jain, Advocate
for the petitioners.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 528 of BNSS, 2023 for quashing of order dated 18.11.2023, passed by the Judicial Magistrate First Class, Jalandhar in case titled as *Amrit Malwa Capital Ltd. vs. Bansal Motors and others*, arising out of complaint bearing No. NACT/2242/2022, filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), whereby petitioners No. 2 and 3 had been declared as proclaimed persons.

2. The present petition has been filed by the petitioners on the grounds and it has been argued by their counsel that the petitioners have been falsely implicated in this case. The petitioners were never served with any notice/warrants issued by the trial Court and had been declared as proclaimed persons without following the proper procedure prescribed under Section 82 Cr.P.C. It is further submitted that the complainant has also got registered an FIR bearing No. 69 dated 22.04.2023, under Sections 420, 406 and 34 of IPC at Police Station Division No. 6, District Jalandhar against them. However,

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vide order dated 05.09.2024, passed by this Court in CRM-M-43652-2024, they have been granted concession of interim bail and have been directed to join investigation. The petitioners are ready to appear before the learned trial Court and join the Court proceedings. With these broad submissions, it is urged that the impugned order is liable to be set aside.

3. I have heard learned counsel for the petitioners at considerable length 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 petitioners No. 2 and 3 till the date of declaring them as proclaimed persons, I am of the considered opinion that the impugned order dated 18.11.2023 suffers from material 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***

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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.

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 22.03.2023, since non-bailable warrants issued against the petitioners were received back unserved, the trial Court had ordered for effecting service upon them through publication in the newspaper titled as Daily Ashiana for 09.05.2023. 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 that the petitioners had absconded or were concealing themselves 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. It is further revealed from the record that the case was adjourned on five consecutive dates due to non-deposit of publication charges by the complainant. It was eventually deposited on 29.08.2023 and proclamation was again ordered to be published in 'Daily Ashiana'. The publication was effected on 10.10.2023. Since the mandatory period of 30 days had not elapsed, hence, on 27.10.2023, the case was adjourned to 18.11.2023 for awaiting the presence of petitioners No. 2 and 3. However, while adjourning the case to 18.11.2023, the trial Court failed to consider the fact that it could

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not have extended the time by simply adjourning the case as a fresh publication 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.***

8. More so, the publication was effected on 10.10.2023, requiring petitioners No. 2 and 3 to cause their appearance before the trial Court on 27.10.2023, which means they were not granted mandatory period of 30 days to cause their appearance before the Court concerned. 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.***

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 18.11.2023, passed by the learned Judicial Magistrate First Class, Jalandhar in case titled as ***Amrit Malwa Capital Ltd. vs. Bansal Motors and others***, arising out complaint bearing No. NACT/2242/2022, filed under Section 138 of the N. I. Act, whereby petitioners No. 2 and 3 had been declared as proclaimed persons, is quashed with all consequential proceedings arising therefrom.

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10. However, petitioner Nos. 2 and 3 are 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 their petitions to be filed under Section 482 of BNSS. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioners 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 petitioners before the trial Court, their arrest shall remain stayed.

13. It is made clear that in case the petitioners fail to appear before the trial Court within a period of four weeks from today, this petition shall be deemed to be dismissed.

23.10.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No