

2024:PHHC:150370



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

114

CRM-M-53435-2024 (O&M)
Date of decision: 19.11.2024

Rachna Sharma ...Petitioner

Versus

Welldone Packers (India) Pvt. Ltd. ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Manuj Nagrath, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. CRM-45456-2024

Allowed as prayed for, subject to all just exceptions.

Documents are taken on record as Annexures P-7/A and P-8.

2. CRM-M-53435-2024 (O&M)

The instant petition has been filed by the petitioner seeking quashing of order dated 30.09.2024 (Annexure P-7), passed by the learned Judicial Magistrate First Class, Ludhiana in case titled as **Welldone Packers Pvt. Ltd. vs. Anant Precessions Pvt. Ltd.**, arising out of a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), whereby the petitioner had been declared a proclaimed person.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by her counsel that the petitioner has been falsely implicated in the aforesaid complaint. The petitioner was neither the signatory nor the Managing Director of the said company and she had challenged the summoning order dated 22.05.2019 passed by the learned trial Court by filing a

2024:PHHC:150370



revision petition before the Court of learned Additional Sessions Judge Ludhiana. However, the said petition was dismissed in default due to non-appearance of the petitioner. A bare perusal of the aforesaid complaint would reveal that the petitioner has wrongly been named as Archana Sharma, Managing Director, whereas her name is Rachna Sharma and she was not the Managing Director of the firm and only because of being mother of accused No. 3-Bahul Sharma, she has been implicated in this case. In fact, the proclamation was issued in the wrong name, which is evident from the complaint as well as copy of Aadhar Card of the petitioner. In fact, the petitioner was never served upon with any summons/warrants issued by the learned trial Court. The petitioner had been declared a proclaimed person 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. I have heard learned counsel for the petitioner 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 her a proclaimed person, I am of the considered opinion that the impugned order dated 30.09.2024 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

2024:PHHC:150370



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 CrI. J. 2561, Bishundayal Mahton and others Vs. Emperor : AIR 1943 Patna 366, Devender Singh Negi Vs. State of U.P. : 1994 CrI LJ (Allahabad HC) 1783, Gurappa Gugal and others Vs. State of Mysore : 1969 CrI LJ 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 CrI LJ 1368, Birad Dan Vs. State : 1958 CrI LJ 965, Negi alias Debu Vs. State of U.P. and another, 1994 CrI LJ 1783 and Pal Singh Vs. The State : 1955 CrI LJ 318.***

7. After going through the material placed on record as well as the copies of zimni orders passed by the learned trial Court, it is revealed that on 14.08.2024, since the non-bailable warrants issued against the petitioner (who is wrongly named as 'Archana Sharma') were received back unserved, the trial Court had ordered for issuance of proclamation against her for 30.09.2024. A bare perusal of this order shows that the learned trial Court before ordering for publication of proclamation has not recorded its proper satisfaction that the petitioner had absconded or was concealing herself 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 CrI. J. 2561.***

8. Further, on a perusal of the statement of the serving police official, 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

2024:PHHC:150370



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

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 but without meaning to make any comment on the merits of the case, the present petition is allowed and the impugned order dated 30.09.2024 (Annexure P-7), passed by the learned Judicial Magistrate First Class, Ludhiana in case titled as *Welldone Packers Pvt. Ltd. vs. Anant Precessions Pvt. Ltd.*, arising out of a complaint filed under Section 138 of the N. I. Act, whereby the petitioner had been declared a 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 her 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

2024:PHHC:150370



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,her 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.

14. Since in the complaint, the name of the present petitioner/accused has been mentioned as ‘Archana Sharma’ instead of ‘Rachna Sharma’ and summons/warrants had also been issued in the incorrect name, therefore, the learned trial Court may call upon the respondent/complainant to move an appropriate application for making necessary corrections in the complaint.

19.11.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No