



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

305

CRM-M-56703-2024 (O&M)
Date of decision: 12.12.2024

Rohit Gill @ Rohit Masih**...Petitioner**

Versus

State of Punjab**...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Hitesh Chopra, Advocate
for the petitioner.

Mr. Satjot Singh, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for quashing of order dated 05.12.2023, passed by the learned Sub Divisional Judicial Magistrate, Batala in case titled as ***State vs. Tufal Masih***, arising out of FIR No. 125 dated 23.11.2012, registered under Section 420 of IPC at Police Station Dera Baba Nanak, District Gurdaspur, 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. Co-accused Tuffail Masih, Eric Masih and Dickson Masih faced full length trial and had been convicted by the learned trial Court, vide judgment dated and order on quantum of sentence dated 08.02.2018. However, they had preferred an appeal before the learned lower appellate Court, wherein the offence was ordered to be compounded in view of Section 320(5) of Cr.P.C. and the aforesaid co-accused were acquitted of

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the charge framed against them, vide judgment dated 02.09.2024. Since the petitioner was abroad at the time of registration of the aforementioned FIR, he could not be arrested and did not face the trial. Now, a valid compromise has been effected between the petitioner and complainant party, vide compromise deed dated 14.10.2024 (Annexure P-2) and there is every likelihood that the offence would be compounded qua the petitioner as well. It is further argued that even otherwise, the petitioner was not served with any notice/summons/warrants issued by the learned trial Court at his ordinary place of residence and had been declared a proclaimed person without following the proper procedure prescribed under Section 82 of Cr.P.C. Hence, it is urged that the impugned order is liable to be set aside.

3. Learned State counsel has argued that the petitioner was having due knowledge of pendency of the case against him and had intentionally avoided his appearance before the learned trial Court. Therefore, he had been rightly declared a proclaimed person. Hence, it is urged that the petition is liable to be dismissed.

4. I have heard learned counsel for the parties at considerable length 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 of Cr.P.C. as against the petitioner till the date of declaring him a proclaimed person, I am of the considered opinion that the impugned order dated 05.12.2023 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 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 learned trial Court, it is revealed that on 20.09.2013, since the non-bailable warrants issued against the petitioner were received back unserved, the learned trial Court had ordered for issuance of proclamation against him for 04.10.2013. A perusal of order dated 20.09.2013 shows that the proclamation against the petitioner was issued for 04.10.2013, which means that the petitioner was granted only 13 days' time to cause his appearance before the 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***



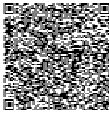
826 and ***Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339.*** On 04.10.2013, the proclamation was not received back either served or otherwise and the case was adjourned to 17.10.2013 awaiting execution of proclamation. On 17.10.2013, the statement of serving police official was recorded, as per which, he had executed the proclamation only on 16.10.2013, which again was in violation of the provisions of Section 82(1) Cr.P.C. as the petitioner was given only one day's time to appear before the Court.

8. Further, a perusal of the statement of the serving police official reveals 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 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, the present petition is allowed and the impugned order dated 05.12.2023, passed by the learned Sub Divisional Judicial Magistrate, Batala in case titled as ***State vs.***

Tufal Masih, arising out of FIR No. 125 dated 23.11.2012, registered under

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Section 420 of IPC at Police Station Dera Baba Nanak, District Gurdaspur, 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 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.

12.12.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No