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

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CRM-M-58192-2024 (O&M)

Date of decision: 21.11.2024

Gurjeet Singh Johar**...Petitioner****Versus****State of Punjab and another****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Ms. Prachi Darji, Advocate for
Mr. Tanmoy Gupta, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for quashing of order dated 23.08.2023, passed by the learned Judicial Magistrate First Class, Rupnagar in case bearing number NACT-86-2019, titled as ***Jagjit Kumar Jaggi vs. C & C Towers Ltd.***, filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), whereby the petitioner had been declared a proclaimed person. Although, the petitioner has made some other prayers, however, learned counsel for the petitioner has restricted her argument only to the extent of quashing of aforesaid order dated 23.08.2023.

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. Since the complainant had given wrong address of the petitioner, he could not be served with the

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summons/warrants issued by the learned trial Court as the same were always served at ISBT-cum-Commercial Complex, Opposite Verka Milk Point, Phase-6, SAS Nagar, whereas the correct addresses of the company and the petitioner are Plot No. 70, Sector 32, Gurugram, Haryana and H. No. 11, Club Drive, M.G. Road, Ghitorni, Mehrauli, Delhi, respectively. Vide order dated 16.03.2019 passed by the learned trial Court, the complainant was even directed to provide the correct address of the petitioner but he did not do so. It is further argued that the petitioner had been declared a proclaimed person without following the proper procedure prescribed under Section 82 Cr.P.C. He 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.

3. I have heard learned counsel for the petitioner 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 learned trial Court from the date of initiating proceedings under Section 82 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 23.08.2023 suffers from several 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

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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 12.06.2023, 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 18.07.2023. On 18.07.2023, since the proclamation issued on 12.06.2023 was not received, the learned trial Court ordered for issuance of fresh proclamation for 03.08.2023, which means that the petitioner was granted only 19 days' time to cause his appearance before the learned trial 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

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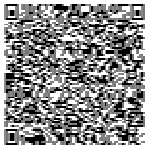


be placed upon *Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826* and *Shokat Ali Vs. State of Haryana : 2020(2) RCR (Criminal) 339*.

7. When the case was taken up on 03.08.2023, the proclamation was received back executed. However, since the mandatory period of 30 days had not elapsed till then, the case was adjourned to 23.08.2023 awaiting the appearance of the petitioner. However, while adjourning the case to 23.08.2023, the learned trial Court failed to consider the fact that it could not have extended the time by simply adjourning the case as a fresh proclamation 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*. More so, a perusal of the record also reveals that the summons/warrants were not issued at the correct address of the petitioner or his firm. Hence, it can reasonably be presumed that the process never reached the petitioner.

8. 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 **partly** allowed and the impugned order dated 23.08.2023, passed by the learned Judicial Magistrate First Class, Rupnagar in case bearing number NACT-86-2019, titled as *Jagjit Kumar Jaggi vs. C & C Towers Ltd.*, 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.

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9. 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.
10. 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.
11. Till the appearance of the petitioner before the trial Court, his arrest shall remain stayed.
12. 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.
13. The petitioner may approach the learned trial Court at the appropriate stage for seeking permanent exemption from his personal appearance or for appearing through video conferencing.

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Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No