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

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CRM-M-59305-2024 (O&M)
Date of decision: 28.11.2024

Taranpreet Singh ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Gobind Singh Randhawa, Advocate
for the petitioner.
(Through VC)

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 06.04.2016 (Annexure P-13), passed by the Judicial Magistrate First Class, Batala in Criminal Complaint No. 72 of 2013, titled as *Surain Singh vs. Paramjit Kaur and others*, filed under Sections 302, 382, 201, 511 and 34 of IPC, 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 the aforesaid case. It is further submitted that even otherwise, the aforesaid complaint had been filed in the year 2015, whereas the petitioner had left India for Canada in the year 2014 on a student Visa. The petitioner had no knowledge about the pendency of the aforesaid complaint as he was never served with any notice/warrants issued by the trial Court. More so, the petitioner had been declared a proclaimed person without following the

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proper procedure prescribed under Section 82 Cr.P.C. 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 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 06.04.2016 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 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***.

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6. 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 17.02.2016, 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 30.03.2016. 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 himself 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. Further, when the case was taken up on 30.03.2016, it was adjourned to 06.04.2016 as the proclamation was executed on 02.03.2016 and the mandatory period of 30 days had not elapsed by then. However, while adjourning the case to 06.04.2016, 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.***

8. 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

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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. More so, the petitioner has taken a plea that he had left India for Canada for pursuing his studies in the year 2014 i.e. before filing of the aforesaid complaint. He has placed on record a photocopy of his passport, a perusal of which shows that he had reached Canada on 25.12.2014. Hence, it can reasonably be presumed that the process never reached him. However, there is nothing on record to show that any letter to Ministry of External Affairs qua service of notice/warrants/proclamation against the petitioner had been written by the learned trial Court. As such, it can reasonably be presumed that the process never reached the petitioner and hence, he had no occasion to conceal himself. As such, the action of the learned trial Court by switching to the proclamation proceedings under Section 82 Cr.P.C. can itself be stated to be bad in the eyes of law. Reliance in this context can be placed upon ***Manjit Kaur vs. State of Punjab : 2013 SCC Online (P&H) 8663.***

10. 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 06.04.2016

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(Annexure P-13), passed by the Judicial Magistrate First Class, Batala in Criminal Complaint No. 72 of 2013, titled as *Surain Singh vs. Paramjit Kaur and others*, filed under Sections 302, 382, 201, 511 and 34 of IPC, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

11. 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.

12. 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.

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

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

28.11.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes