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

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CRM-M-60066-2024 (O&M)
Date of decision: 02.12.2024

Dalwinder Singh ...Petitioner

Versus

State of Punjab ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Lakhwinder Singh Mann, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

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 07.01.2013, passed by the learned Judicial Magistrate First Class, Nakodar in case titled as *State vs. Daljinder Singh*, arising out of FIR No. 111 dated 09.05.2010, registered under Sections 323 and 325 of IPC at Police Station Shahkot, District Jalandhar, whereby the petitioner had been declared a proclaimed offender.
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. Initially, there was an oral settlement between the parties that the complainant would not pursue the case and hence the petitioner went abroad under such impression. However, *challan* was filed in the matter in his absence and he had been declared a proclaimed offender

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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, who has advance notice of the petition, has argued that the petitioner was having knowledge about the pendency of the trial and had intentionally avoided his appearance before the learned trial Court. Therefore, he had rightly been declared a proclaimed offender. Hence, it is urged that the petition is liable to be dismissed.

4. I have heard learned counsel for the parties 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 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 offender, I am of the considered opinion that the impugned order dated 07.01.2013 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.*

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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 CriLJ 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 zimni orders passed by the learned trial Court, it is revealed that on 17.10.2012, since the summons issued against the petitioner were received back unserved, the learned trial Court had ordered for issuance of proclamation against him for 05.12.2012. A bare perusal of this order shows that the learned trial Court before ordering for publication of proclamation has not recorded its satisfaction much less proper satisfaction that 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.***

8. When the case was taken up on 05.12.2012, the proclamation was received back duly effected. However, the case was adjourned to 07.01.2013 for recording the statement of the serving police official. A perusal of the statement of serving police official recorded on 07.01.2013 shows that the proclamation was executed on 30.11.2012 requiring the petitioner to cause his appearance before the learned trial Court on 05.12.2012, which means that he was not granted statutory period of 30 days to cause his appearance before the Court concerned. Hence, the same was in clear violation of the provisions of

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Section 82(1) of 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. Further, a perusal of order dated 17.10.2012 reveals that it was in the due knowledge of the learned trial Court that the petitioner had been residing abroad. However, no efforts whatsoever were made by the Court to ascertain the address of the petitioner of the country, where process could be sent to him. No letter to Ministry of External Affairs qua service of notice/warrants/proclamation against the petitioner is shown to have 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. There is nothing to demonstrate that the State had either complied with the statutory provisions of Section 105 of Cr.P.C. or were not required to comply with such provisions. As such, the action of the learned trial Court by switching to the proclamation proceedings under Section 82 of 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 07.01.2013, passed by the learned Judicial Magistrate First Class, Nakodar in case titled as ***State vs. Daljinder Singh***, arising out of FIR No. 111 dated 09.05.2010,

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registered under Sections 323 and 325 of IPC at Police Station Shahkot, District Jalandhar, whereby the petitioner had been declared a proclaimed offender, 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 learned trial Court, his arrest shall remain stayed.

14. 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.

02.12.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No