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

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CRM-M-65260-2023 (O&M)

Date of decision: 07.08.2024

Arun**...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Lalit Kumar Narang, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of order dated 20.04.2022 (Annexure P-1), passed by the Sub Divisional Judicial Magistrate, Meham in case titled as ***State vs. Arun***, arising out of FIR No. 0386 dated 15.07.2017, registered under Sections 406 and 420 of IPC at Police Station Meham, District Rohtak, whereby the bail/surety bonds of the petitioner had been cancelled and arrest warrants were issued against him and also for quashing the order dated 16.11.2023 (Annexure P-2), whereby the petitioner had been declared a proclaimed person by the said Court.

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. The petitioner was granted concession of

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regular bail by the trial Court and he was regularly appearing before the Court. However, on 20.04.2022, the petitioner could not appear before the trial Court on account of noting down a wrong date, consequent to which, his bail was cancelled and arrest warrants were issued against him by the trial Court. Thereafter, due to non-appearance of the petitioner, proceedings under Section 82 of Cr.P.C. were initiated against him and he had been declared a proclaimed person, vide impugned order dated 16.11.2023. Learned counsel for the petitioner has argued that the petitioner had been declared a proclaimed person without following the proper procedure prescribed under Section 82 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, having knowledge about the pendency of the trial, had intentionally avoided his appearance before the trial Court, therefore, he was rightly declared a proclaimed person. It is, accordingly, 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 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 16.11.2023 suffers from illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

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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, 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 zimni orders passed by the trial Court, it is revealed that on 24.07.2023, 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 16.11.2023. However, a perusal of the statement of serving police official ESI Ram Mehar shows that the proclamation was never read over in accordance with Section 82(2) of Cr.P.C. in some conspicuous place of the town wherein the petitioner ordinarily used to reside. Hence, it was in violation of the statutory provisions of Section 82(2) of Cr.P.C.. It is well settled that the three sub-clauses (a) to (c) in Section 82

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(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* and order dated 30.04.2024 passed by this Court in *CRM-M-19419-2024, titled as Jagdeep Singh vs. State of Haryana*. Since the valid publication of proclamation is not proved, hence the impugned order can also not be sustained.

8. Moreover, vide order dated 08.01.2024, passed by this Court, the petitioner was directed to join the proceedings with the trial Court within a period of 10 days and the trial Court was directed to release him on interim bail on his appearance, subject to furnishing fresh bail/surety bonds to its satisfaction and on payment of costs of Rs.5,000/- to be deposited with the District Legal Services Authority concerned.

9. In compliance of the aforesaid order, the petitioner has appeared before the trial Court. He has been released on interim bail by the trial Court on furnishing fresh bail/surety bonds to its satisfaction. The petitioner has placed on record a photocopy of the receipt dated 19.01.2024 to show that he has deposited the costs of Rs. 5,000/- as imposed upon him by this Court. The objective of Section 82 of Cr.P.c. is to secure the presence of the accused and the same stands achieved as the petitioner has already joined proceedings.

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 orders dated 20.04.2022 and 16.11.2023, passed by the Sub Divisional Judicial Magistrate, Meham in case titled as

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State vs. Arun, arising out of FIR No. 0386 dated 15.07.2017, registered under Sections 406 and 420 of IPC at Police Station Meham, District Rohtak, whereby the bonds of the petitioner had been cancelled and he had been declared a proclaimed person, respectively, are hereby quashed along with all the subsequent proceedings having emanated therefrom.

11. Since the petitioner has already joined proceedings before the trial Court, the interim bail, granted to him, shall be converted into regular one on the same personal/surety bonds, which have already been furnished by him.

07.08.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No