



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

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CRM-M-7108-2025 (O&M)

Date of decision: 07.02.2025

Sushma

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ankush Thakral, 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 16.01.2024 (Annexure P-7), passed by the Court of learned Judicial Magistrate First Class, Bathinda in case titled as ***Sriram Transport Finance Company vs. Sushma***, arising out complaint bearing No. NACT/3987/2023, filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), 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 her counsel that the petitioner has been falsely implicated in the aforementioned complaint. On appearance before the learned trial Court, she was granted bail and was regularly attending the Court proceedings. However, she could not appear before the Court as on 20.10.2023 as her counsel has conveyed her a wrong date. Consequently, her bail was cancelled by the learned trial Court. Thereafter, the petitioner was ordered to be served through proclamation, vide order dated 29.11.2023 and

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ultimately, she was declared a proclaimed person, vide impugned order. It is submitted that the petitioner is ready to join the Court proceedings. Even otherwise, she 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. 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 her a proclaimed person, I am of the considered opinion that the impugned order dated 16.01.2024 suffers from some illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

5. 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 29.11.2023, 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 16.01.2024. On 16.01.2024, the proclamation was received back executed on 12.12.2023. However, on a perusal of order dated 13.12.2023, it is revealed 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 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

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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.***

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 allowed and the impugned order dated 16.01.2024 (Annexure P-7), passed by the Court of learned Judicial Magistrate First Class, Bathinda in case titled as ***Sriram Transport Finance Company vs. Sushma***, arising out complaint bearing No. NACT/3987/2023, 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.

9. Since the petitioner shown her bona fide to join the Court proceedings, which would obviously help in speedy conclusion of trial, she is directed to surrender before the learned trial Court within a period of 10 days from today and on doing so, the learned trial Court shall release her on bail, subject to her furnishing fresh personal/surety bonds to its satisfaction.

4. Till the appearance of the petitioner before the learned trial Court, her arrest shall remain stayed.

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5. It is made clear that in case the petitioner fails to appear before the learned trial Court within the stipulated time, this petition shall be deemed to be dismissed.
6. However, this relief shall be subject to payment of cost of Rs. 20,000/-, to be deposited by the petitioner with the learned trial Court, which shall be disbursed to complainant.

07.02.2025
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>