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

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CRM-M-11234-2025 (O&M)

Date of decision: 28.02.2025

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

Present:- Mr. Suneet Pal Singh Aulakh, 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 23.05.2024, passed by the Judicial Magistrate First Class, Samrala in case titled as ***Swarandeep Singh vs. Harbhajan Singh etc.***, arising out complaint bearing No. NIACT/53/2020, filed under Section 138 of the N. I. Act, 1881, 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 this complaint. On appearance before the Court, the petitioner was granted concession of bail and he was regularly appearing before the Court concerned but on 22.12.2023, he could not appear before the Court, due to which, his bail had been cancelled. Since the petitioner was not aware about the subsequent dates, he could not appear before the Court and had been declared a proclaimed person by passing the impugned order. It is

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argued that the petitioner was never served with the proclamation or warrants issued by the trial Court. More so, the petitioner had been declared a proclaimed person without following the proper procedure prescribed under Section 82 of Cr.P.C. The petitioner is an old age person and is ready to join the proceedings before the learned trial Court. 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 23.05.2024 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***

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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 17.02.2024, 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 20.04.2024. On 20.04.2024, the proclamation was received executed. However, the case was adjourned to 23.05.2024 as the mandatory period of 30 days had not elapsed. A perusal of the statement of the serving police official reveals that the proclamation was executed on 27.03.2024, which means that the petitioner was not granted mandatory period of 30 days 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 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***. More so, while adjourning the case to 23.05.2024 to await the appearance of the petitioner, the 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

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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.***

7. Further, 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 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.***

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 23.05.2024, passed by the Judicial Magistrate First Class, Samrala in case titled as ***Swarandeep Singh vs. Harbhajan Singh etc.***, arising out complaint bearing No. NIACT/53/2020, filed under Section 138 of the N. I. Act, 1881, 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. However, this relief shall be subject to the condition that the petitioner shall deposit cost of Rs. 10,000/- with the learned trial Court, which shall be disbursed to the complainant/respondent No. 2 on this appearance.

28.02.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No