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

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CRM-M-18977-2025 (O&M)

Date of decision: 07.04.2025

Kursaid @ Kursaid Rani**...Petitioner****Versus****Cholamandlam Investment & Finance Company****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Rakesh Gupta, 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 quashing of order dated 21.02.2024 (Annexure P-14), passed by the Court of learned Judicial Magistrate First Class, Ludhiana in case titled as ***Cholamandlam Investment & Finance Company vs. Kursaid***, arising out complaint bearing No. COMA/8449/2022, filed under Section 138 of the Negotiable Instruments Act (*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 she has been falsely implicated in this complaint. She had no knowledge about the pendency of the aforesaid complaint as she was never served with any notice/warrants issued by the trial Court. More so, she had been declared a proclaimed person without following the proper procedure prescribed under Section 82 Cr.P.C.

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She is ready to join the Court proceedings. 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 her a proclaimed person, I am of the considered opinion that the impugned order dated 21.02.2024 suffers from some 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/her 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 trial Court, it is revealed that on 03.01.2024, since the non-bailable warrants issued against the petitioner were received back unserved, the trial Court had ordered for issuance of proclamation against her for 21.02.2024, which was received executed on 16.01.2024. However, a perusal of the statement of the serving police official ASI Himat Ram 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.***

7. 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 21.02.2024 (Annexure P-14), passed by the Court of learned Judicial Magistrate First Class, Ludhiana in case titled as ***Cholamandlam Investment & Finance Company vs. Kursaid***, arising out complaint bearing No. COMA/8449/2022, filed under

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Section 138 of the N. I. Act, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

8. Keeping in view the fact that the petitioner is ready 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 03 weeks 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.

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

10. 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.

11. However, this relief shall be subject to payment of cost of Rs. 10,000/-, to be deposited by the petitioner with the learned trial Court, which in turn shall be disbursed to the respondent/complainant.

07.04.2025*Waseem Ansari***(MANISHA BATRA)****JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*