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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-32892-2024(O&M)

Date of Decision: 07.03.2025

PRATEEK RAO

... Petitioner

Versus

M/S A.K.J. PROPERTIES PVT LTD

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Rajesh Lamba, Advocate for the petitioner.

SANJIV BERRY, J. (ORAL)

Learned counsel for the petitioner has placed on record receipt qua payment of the cost as imposed vide order dated 12.07.2024, the same is taken on record.

2. The instant petition under Section 482 Cr.P.C. has been moved by the petitioner seeking quashing of the order dated 30.05.2024 (Annexure P-6) passed by learned Judicial Magistrate First Class Gurugram, whereby the petitioner was declared as proclaimed person in case No. NACT/75438/2023 titled as “*M/S A K J Properties Pvt Ltd Vs. M/S Ninaniya Estates Ltd Etc.*”.

3. Arguments heard.

4. Learned counsel for the petitioner *inter alia* contends that the petitioner after being summoned in the aforesaid complaint case had been



granted concession of bail and was appearing in the learned trial court without any fail. He submits that petitioner moved an application for exemption on 07.10.2023, which was allowed, and on the next date i.e. 04.11.2023 he moved another application for exemption on account of certain unavoidable circumstances, but the same was declined and his bail was cancelled, besides being directed to serve through warrants of arrest for 18.12.2023. He submits that the absence of the petitioner was on account of he being suffering from fever and had even attached the medical certificate in this regard, despite that his bail was cancelled. He contends that petitioner was never served with the non-bailable warrants and simply on the basis of the report on the warrant that one person namely Vijay has been informed about the impending warrant, the learned trial Court presumed the appropriate service to have been made and proceeded to issue proclamation under Section 82 Cr.P.C vide order dated 18.12.2023 (Annexure P-4) which is manifestly wrong, as there is nothing on record as to who was that Vijay, his parentage is not mentioned, nor is mentioned as to how he is related to the petitioner and the learned trial Court fell in error in issuing the proclamation against the petitioner and subsequently declared him proclaimed person in the case vide impugned order dated 30.05.2024 (Annexure P-6) without following the due procedure under Section 82 Cr.P.C. He submits that petitioner was declared as proclaimed person on 30.05.2024 and it is evident from order dated 31.05.2024 (Annexure P-7) that the petitioner had surrendered in the Court on the very next day and was granted concession of bail, hence prayed for quashing of the impugned order



date 30.05.2024 (Annexure P-6).

5. Notice was issued to the respondent but the same was not served. The issuance of notice to respondent is exempted at this stage.

6. The perusal of record in the light of the arguments addressed by learned counsel for the petitioner manifestly shows that the impugned order passed by learned Magistrate for issuance of proclamation on the basis of report submitted on the warrant qua the same having been brought to the notice of “one Vijay” is without any basis. The learned Magistrate failed to take note that the warrants were not duly executed. Subsequently, when there was no mention of the parentage or address or for that matter any relationship with the petitioner, how could the Magistrate presume that it was in the knowledge of the petitioner that the warrants have been issued and on what basis, he formed opinion regarding the issuance of proclamation necessitated for the service of the petitioner, is also hopelessly missing in the impugned order. The petitioner had moved an application for exemption on medical grounds accompanied with medical certificate which has although been declined but the Magistrate should not have acted in haste in doing so and straight away jumped to issuance of proclamation without making any effort for getting the service of petitioner effected through ordinary process by issuing warrants as is required under law.

7. Before proceeding further, it will be apt to mention relevant provisions of Section 82 Cr.P.C which reads as under:-

“82. Proclamation for person absconding.—

(1) If any Court has reason to believe (whether after taking



evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:—

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides; (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; (c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that



effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under subsection (1) ”

8. A bare reading of the Provisions laid down by law in this regard would reveal that in terms of Section 82 Cr.P.C, proclamation may be issued by the Court against an individual, if the Court reasonably believes that the person for whom a warrant has been issued is absconded or is hiding, thereby, making it impossible for the warrant to be carried out. In the present case, no doubt, the warrants of arrest were issued but it is evident from the perusal of the order dated 18.12.2023 (Annexure P-4) that the same had been returned back un-executed. Furthermore, it is recorded by the Magistrate therein that *“the warrants of arrest of the petitioner has been returned back unexecuted with the report that one person namely Vijay was informed about the impending warrants. This prima facie shows that the accused is very much within the knowledge of present complaint and is avoiding the execution of warrants intentionally. The Counsel for complainant urged that the accused has intentionally left or changed address to evade the service.”*

9. A perusal of the aforesaid observations made by the learned Magistrate in the order dated 18.12.2023 (Annexure P-4) would reveal three things, firstly the warrants of arrest of petitioner were received back unexecuted, secondly the executing official reported that one Vijay was informed about the impending warrants, thirdly it is mentioned in the order



itself that the petitioner might have changed address or left the given address. Once, these aspects were in the knowledge of learned Magistrate as is evident from the order dated 18.12.2023 (Annexure P-4) he should have proceeded to issue fresh warrants of arrest on the alleged correct address. Moreover, the presumption drawn qua the knowledge of the petitioner by the Magistrate on the ground that one Vijay was reportedly informed about the warrants does not operate in any manner because there is nothing on record that who was that Vijay, how he was related to the petitioner and how on these circumstances the learned trial Court presumed the warrant of arrest to have been in the knowledge of the petitioner. The learned Magistrate should have applied his judicious mind in all these circumstances rather than acting in haste and jumping to issue proclamation straightway. The learned Magistrate in passing the impugned order (Annexure P-6) declaring the petitioner as proclaimed person in the case without following the process, totally misread the provisions laid down under Section 82 Cr.P.C and passed the impugned order on the basis of the circumstances mentioned above which does not appeal to the judicious mind to have been made with due compliance of the provisions under Section 82 of Cr.P.C, as a consequent the impugned order dated 30.05.2024 (Annexure P-6) passed by learned Judicial Magistrate First Class, Gurugram is not in consonance with the provisions contained under Section 82 Cr.P.C and hence bad in law. Moreover, it is worth mentioning here that after being declared as proclaimed person in the case on 30.05.2024, on very next day petitioner had surrendered in Court on 31.05.2024 and was granted concession of bail



by learned trial Court. Therefore, considering the above facts and circumstances the impugned order dated 30.05.2024 (Annexure P-6) passed by learned Judicial Magistrate First Class, Gurugram in case No. NACT/75438/2023 titled as “M/S A K J Properties Pvt Ltd Vs. M/S Ninaniya Estates Ltd Etc. is held to be not in consonance with the provisions contained under Section 82 Cr.P.C and held bad in the law and is liable to be set aside. Hence, the impugned order dated 30.05.2024 (Annexure P-6) passed by learned Judicial Magistrate First Class, Gurugram declaring the petitioner as proclaimed person, is hereby set aside.

- 10. The Petition stands allowed.
- 11. Pending application(s) shall also stands disposed of.

(SANJIV BERRY)
JUDGE

07.03.2025

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |