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

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CRM-M-62594-2024 (O&M)

Date of decision: 27.01.2025

Rajesh**...Petitioner****Versus****State of Haryana and another****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Sandeep Siwach, 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 12.01.2024 (Annexure P-12), passed by the Court of learned Additional Chief Judicial Magistrate, Sonapat in case titled as ***Ishwar Singh vs. Rajesh***, arising out complaint bearing No. NACT/972/2017, filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), whereby the bail of the petitioner had been cancelled, as well as for quashing of order dated 08.08.2024 (Annexure P-20), whereby the petitioner had been declared a proclaimed person in the aforesaid case.

2. At the very outset, learned counsel for the petitioner has restricted his arguments to extent of quashing of order dated 08.08.2024 (Annexure P-20) only.

3. 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 the aforementioned complaint. He was granted concession of bail by the learned trial Court, vide order dated 22.08.2019 but

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he could not appear before the Court on 05.12.2019 on account of noting a wrong date. Thereafter, the petitioner came to know that his bail had been cancelled by the trial Court and proclamation had been issued against him. He was to surrender before the Court but due to outbreak of COVID-19 pandemic at that time, the Courts were not working and the cases were being adjourned. Due to non-appearance of the petitioner before the Court, the proceeding initiated against him under Section 82 of Cr.P.C. have culminated into declaring him as a proclaimed person, vide impugned order. It is argued that the petitioner is ready to join the Court proceedings. Even otherwise, he 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.

4. I have heard learned counsel for the petitioner at considerable length 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 learned 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 08.08.2024 suffers from some illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

6. 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 08.04.2024, since the non-bailable warrants issued against the petitioner were received back unserved, the learned trial Court had ordered for issuance of

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proclamation against him for 29.05.2024. A bare perusal of this order shows that the learned trial Court before ordering for publication of proclamation has not recorded its proper satisfaction that that the petitioner had absconded or was concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence, which was in violation of the provisions of Section 82(1) of Cr.P.C. Reliance in this regard can be placed upon ***Rohit Kumar Vs. State of Delhi : 2008 Crl. J. 2561.***

7. Further, since the proclamation issued on 08.04.2024 was not received back executed or otherwise, fresh proclamation was issued for 01.06.2024, vide order dated 29.04.2024. However, a perusal of the record reveals that since the Presiding Officer was availing joining time from 27.05.2024 to 01.06.2024, the case was taken up on 24.05.2024 and it was adjourned to 01.07.2024. On 01.07.2024, the proclamation was received back duly executed but the case was adjourned to 08.08.2024 awaiting the presence of the petitioner. However, it is nowhere reflecting as to why the petitioner was not declared a proclaimed person on 01.07.2024 itself when the proclamation was received back executed and mandatory period of 30 days had already elapsed. The learned trial Court has also ignored the fact that while taking up the case on 24.05.2024 instead of 01.06.2024, which was the date mentioned in the proclamation, and adjourning the case to 01.07.2024, the learned trial Court was required to issue a fresh proclamation but the same has not been done. In view thereof, it can be stated that the procedure adopted by the learned trial Court while declaring the petitioner as a proclaimed person was not fully in consonance with the provisions of Section 82 of Cr.P.C.

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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 **partly** allowed and the impugned order dated 08.08.2024 (Annexure P-20), passed by the learned trial Court in case titled as **Ishwar Singh vs. Rajesh**, arising out complaint bearing No. NACT/972/2017, 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. Keeping in view the fact that the petitioner is ready to join the Court proceedings which would obviously help in speedy conclusion of trial, he is directed to surrender before the learned trial Court within a period of 15 days from today and on doing so, the learned trial Court shall release him on bail, subject to his furnishing fresh personal/surety bonds to its satisfaction.

10. Till the appearance of the petitioner before the learned trial Court, his arrest shall remain stayed.

11. 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.

12. However, this relief shall be subject to payment of cost of Rs. 40,000/-, to be deposited by the petitioner with the learned trial Court, which shall be disbursed to complainant/respondent No. 2 on his appearance before the Court.

27.01.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No