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

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CRM-M-64482-2024 (O&M)

Date of decision: 08.01.2025

Divya Thakur**...Petitioner****Versus****Babandeep Singh****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Jagjot Singh Lalli, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for quashing of order dated 13.02.2023 (Annexure P-3), passed by the Judicial Magistrate First Class, Jalandhar in case titled as ***Babandeep Singh vs. Divya Thkaur***, arising out of a complaint 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 aforesaid complaint. The petitioner was never served with any notice/summons/warrants issued by the learned trial Court and she had been declared a proclaimed person without following the proper procedure prescribed under Section 82 Cr.P.C. Hence, it is urged that the impugned order is liable to be set aside.

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3. I have heard learned counsel for the petitioner 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 13.02.2023 suffers from material 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 24.11.2022, since the non-bailable warrants issued against the petitioner were received back unserved, the learned trial Court had ordered for issuance of proclamation against her for 16.01.2023. 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 herself 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.***

6. Further, when the case was taken up on 16.01.2023, the proclamation issued against the petitioner was received back executed on 12.01.2023, requiring the petitioner to cause her appearance on 16.01.2023 before the learned trial Court, which means that he was not granted statutory period of 30 days to cause her appearance before the trial Court. Hence, the

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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.***

7. Although, the learned trial Court, by adjourning the case to 13.02.2023, had tried to give mandatory period of 30 days to the petitioner to appear before it, however, while doing so, the learned 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 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.***

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 13.02.2023 (Annexure P-3), passed by the Judicial Magistrate First Class, Jalandhar in case titled as ***Babandeep Singh vs. Divya Thkaur***, arising out of a complaint 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. 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 her petition to be filed under Section 482 of

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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, her 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. Since the main petition stands disposed of, pending application(s), if any, shall also be treated as disposed of.

08.01.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No