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

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CRM-M-42378-2024 (O&M)

Date of decision: 02.04.2025

Shobit Mittal

...Petitioner

Versus**State of Haryana and another**

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Rohit Dheer, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)**1. CRM-48059-2025**

Allowed as prayed for.

Documents are taken on record.

2. CRM-M-42378-2024 (O&M)

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 01.07.2024 (Annexure P-1), passed by the Court of learned Judicial Magistrate First Class, Panipat in case titled as ***Parveen vs. Ashok Kumar***, arising out of a complaint bearing NACT No. 969 of 2020, filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), whereby the petitioner had been declared a proclaimed person.

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. The address of the petitioner has wrongly been given in the complaint and he was not aware

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about the pendency of the aforementioned complaint. Even otherwise, he was never served with any notice/warrants issued by the learned trial Court and petitioner had been declared a proclaimed person without following the proper procedure prescribed under Section 82 of Cr.P.C. The petitioner is ready to join the Court proceedings. 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 01.07.2024 suffers from material 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 13.05.2024, since the non-bailable warrants issued against the petitioner were received back unserved, the learned trial Court had ordered for issuance of proclamation against him for 01.07.2024. 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

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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, a perusal of the statement of the serving police official reveals that the proclamation was neither pasted nor it was 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 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 01.07.2024 (Annexure P-1), passed by the Court of learned Judicial Magistrate First Class, Panipat in case titled as ***Parveen vs. Ashok Kumar***, arising out of a complaint bearing NACT No. 969 of 2020, 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.

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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 04 weeks from today and on doing so, the learned trial Court shall release him on bail, subject to his furnishing 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. 10,000/-, to be deposited by the petitioner with the learned trial Court, which in turn shall be disbursed to respondent No.2/complainant.

02.04.2025*Waseem Ansari***(MANISHA BATRA)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*