

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

CRM-M-11447 of 2014

Date of Decision: 26th September, 2017

TATA AIG Life Insurance Company Ltd.

...Petitioner

Versus

Krishan Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Aman Bansal, Advocate
for the petitioner.

Mr. Ajit Sihag, Advocate
for respondent.

FATEH DEEP SINGH, J.

In this petition, the petitioner/TATA AIG Life Insurance Company Limited has sought to invoke the jurisdiction of this Court under Section 482 Cr.P.C seeking quashment of orders dated 08.01.2014 passed by the Court of learned Sub-Divisional Judicial Magistrate, Loharu, District Bhiwani and all consequential proceedings arising therefrom.

After going through the arguments of the learned counsel for the parties and perusing the records of the case, a complaint under Section 138 of Negotiable Instrument Act was filed by complainant Krishan Kumar against the present petitioner, who failed to put in appearance and the Court below had passed the impugned orders which are reproduced as under:-

“Whereas the complaint has been made
before me that TATA AIG Life Insurance

Company Limited, registered and Corporate Office Delphi-B wing 2nd Floor, Orchard Avenue, Hiranandani Business Park, Powai Mumbai, through Gaurav Garg committed the offence punishable under Section 138 N.I. Act and it has been returned to a warrant of arrest there upon issued that the said accused cannot be found and it has been shown in my satisfaction that the said accused has absconded or is concealing himself to avoid the service of the said warrant. Proclamation is hereby made that the said accused TATA AIG Life Insurance Company Limited, is required to appear at Loharu before this Court to answer the said complaint on 20.02.2014 serving constable is directed to appear in the Court on the date fixed for recording his statement Tamili constable also to state regarding moveable/immovable property is owned by the said accused.”

A close look at the same reflects that the Company was being sued through Gaurav Garg and in spite of warrants of arrest having been issued the same remained unserved and, thus, the Court has come to the conclusion that the accused cannot be reasonably found and has absconded and tried to conceal himself to avoid service of warrants and that is how the impugned order issuing proclamation was made and, the same is the subject matter of challenge before this Court.

Learned counsel for the two sides do not dispute the fact

that Chapter VI of Cr.P.C pertains to *Processes to Compel Appearance* and Part-C of it deals with *Proclamation and Attachment*. Section 82 clearly envisaged as has been even stressed by the learned counsel for the respondent that when the Court is reasonably of the belief that person against whom warrants have been issued has absconded or is concealing himself so that the warrants cannot be executed, the Court may publish written proclamation requiring him to appear at a specified place and at a specified time and sub-Section 2 of Section 82 deals with publication of proclamation which comprises of that it would be read in some conspicuous place of the address in which such person ordinarily resides or it is to be affixed to some conspicuous part of the home where the person ordinarily resides or to some conspicuous place of town or village and copy of the same would be affixed at some conspicuous part of the Court-house and may in its discretion also publish such a proclamation in a news paper.

Reverting back to the case, to the very query of the Court, learned counsel for the petitioner was totally at loss of words how such an order passed by the Court was amenable to quahsment by virtue of exercise of inherent powers under Section 482 Cr.P.C of this Court. What the Court has called upon the accused is to appear before the Court and answer the said complaint for which it has given date as 20.02.2014. To the mind of this Court, there is total adherence to the provisions of Code of Criminal Procedure by the Court and no prejudice has been caused to the accused side/present petitioner by such an order. It is settled principle of law that provisions of Section 482 Cr.P.C are to be exercised sparingly only in exceptional cases to prevent misuse or abuse of process of the Court,

thereby, to meet the ends of justice. Reliance placed on **State of Haryana and others vs. Ch. Bhajan Lal and others AIR 1992 S.C. 604.**

Since it is an order passed during the process of the matter by the Court to call upon accused/petitioner to put in appearance the petitioner is required to obey it and to appear before the Court concerned to show his claimed bonafide. Though, learned counsel for the petitioner has sought to argue that Mr. Harsimran Singh, Assistant Manager Legal is authorised person to represent the Company by virtue of resolution and how come Gaurav Arora has been sued are matters of evidence which are to be adjudicated by the Court below and does not creates in any manner any disadvantage to the petitioner. The company has been sued and that too through its responsible officer and it is purely because a complaint Annexure P/3 reflects that he is authorised person.

In the light of what has been detailed and discussed above, apparently there is no eventuality for this Court to show indulgence in exercise of its powers under Section 482 Cr.P.C. The petition being devoid of any merits stand dismissed with exemplary cost of Rs.10,000/- which shall be deposited with High Court Legal Service Committee, Chandigarh and on failure of petitioner to deposit the same, the same shall be recovered as arrears of land revenue.

(FATEH DEEP SINGH)
JUDGE

26th September, 2017
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No