

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

CRM-M No.17785 of 2017.

Date of Decision: 12.07.2017.

Sukhwinder Singh @ Sukhdev Singh @ SukhaPetitioner.

VERSUS

Kuldeep SinghRespondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. H.P.S. Ghuman, Advocate for the petitioner.

SNEH PRASHAR, J.

The instant petition invoking the provisions of Section 482 of the Code of Criminal Procedure (for short, Cr.P.C.) has been filed for quashing of Criminal Complaint No.157 dated 03.09.2015 titled 'Kuldeep Singh vs. Sukhwinder Singh' (Annexure-P1) filed under Section 138 of the Negotiable Instruments Act and pending in the Court of learned Judicial Magistrate Ist Class, Samana, District Patiala. A prayer has also been made for quashing the summoning order dated 03.09.2015 (Annexure-P2) as well as the order dated 31.01.2017 (Annexure-P3) vide which the petitioner was declared proclaimed person.

The submissions made by Mr. H.P.S. Ghuman, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner submits that neither the complaint nor the summoning order dated 03.09.2015 passed by learned trial court are sustainable in the eyes of law as they do not refer to any legal

transaction between the parties and also do not mention the date, place and other particulars of the loan, if any advanced by the complainant-respondent to the petitioner. There being no legally enforceable debt, the complaint was not maintainable. To support his argument, learned counsel relies upon **Vijay vs. Laxman and another, 2013(1) R.C.R. (Criminal) 1028.** It is further submitted by learned counsel that the petitioner did not personally receive any summon/ warrants sent to him by learned Magistrate. When the summons could not be served, learned Magistrate instead of issuing bailable warrants, had straightaway issued warrants of arrest and then a proclamation and without complying with the provisions of law had declared the petitioner as proclaimed person. The complaint as well as the orders deserve to be quashed.

There appears no force in the arguments of learned counsel for the petitioner. As per his own averment, the petitioner was declared proclaimed person on 31.01.2017. Admittedly, after passing the summoning order, learned trial court at the first instance had issued summons to the petitioner. Perusal of the report dated 15.12.2015 (Annexure-P4) on the summons, referred to by learned counsel for the petitioner himself, shows that the petitioner was intentionally avoiding service of summons. Accordingly, learned trial court then issued non bailable warrants and when that too could not be served, proclamation was issued and on non appearance of the petitioner, he was declared proclaimed person. There appears no perversity or irregularity in the orders passed by learned trial court. On having been declared proclaimed person, the petitioner ought to have surrendered before learned trial court instead of filing the instant petition with an intention to bypass the entire legal procedure.

Thus, there being no merit in the petition, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

03.07.2017
jitender sharma

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No