

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No.17213 of 2018 (O&M)

Date of decision : 25.5.2018

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Harvinder Singh and another

.....Petitioners

vs.

State of Haryana and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. D.V. Sharma, Senior Advocate with
Mr. Gurpreet Singh, Advocate for the petitioners.

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H. S. Madaan, J.

Petitioners Harvinder Singh and Jogindra Singh Vijan were declared as proclaimed offenders by the Judicial Magistrate Ist Class, Gurgaon, in a complaint case titled as M/s Indiabulls Financial Services Ltd. vs. Nummer Eins Motors (I) Pvt. Ltd. and others.

The petitioners, by way of filing the present petition are seeking quashing of summoning order dated 22.1.2016 and all subsequent proceedings including the order declaring them as proclaimed offenders.

In view of the ratio of authority **Mehnga Singh vs. State of Punjab 2002 (2) RCR (Criminal) 501**, by a Coordinate Bench of this Court, wherein it was observed that in such an eventuality, the

accused should first move the Court which declared him proclaimed offender and even an objection against validity of proclamation is required to be raised in the first instance before the Court which issued the proclamation and power under Section 482 Cr.P.C. is not to be exercised in favour of a person who is absconder or avoiding service.

The petitioners were directed to surrender in the trial Court within 7 days of passing of order (on 25.4.2018) observing that on their doing so and moving an application for regular bail, the same be disposed of expeditiously. The petitioners were required to place on file certified copy of the order passed by the trial Court showing that they had surrendered there. It was clarified that in case of non-compliance, the petition would be liable to be dismissed. From 25.4.2018 the case was adjourned to today i.e. 25.5.2018.

Admittedly, the petitioners have not complied with this order. Rather learned senior counsel appearing for the petitioners has sought recalling of the order stating that the procedure adopted by the trial Magistrate in declaring the petitioners as proclaimed persons/absconders, was defective. He has referred to the following authorities in support of his contention :-

- 1. State of Punjab vs. Deepak Mattu 2007 (4) RCR (Criminal) 380;**
- 2. State of Punjab vs. Navraj Singh 2008 (3) RCR (Criminal) 614;**
- 3. Satinder Singh vs. The State of U.T., Chandigarh and another 2011 (2) RCR (Criminal) 89;**

4. *Rahul Dutta vs. State of Haryana 2012 (2) RCR (Criminal) 585;*

5. *Sanjay Sarin vs. State (Union Territory, Chandigarh) 2013 (3) RCR (Criminal) 138;*

6. *M.P. Singh vs. Assistant Provident Fund Commissioner and another 2013 (3) RCR (Criminal) 37;*

7. *Ashok Kumar vs. State of Haryana and another (P&H) 2013 (4) RCR (Criminal) 550; and*

8. *Arpit vs. State of Haryana 2013 (7) RCR (Criminal) 1880*

However, I find that there is no ground to recall the order, which was passed in the presence of counsel for the petitioners. If the petitioners had any problem or difficulty in complying with the order, they should have approached the Court at the earliest explaining the same which might have been taken into consideration. However the gross violation of the directions issued to them cannot be taken lightly, more particularly when it had been clarified that in case of non-compliance, the petition would be liable to be dismissed.

If the petitioners find anything wrong with the procedure adopted by the trial Magistrate, in declaring them as proclaimed persons, after publication of proclamation under Section 82 Cr.P.C., then they should have approached the trial Court and informed it in that regard seeking regular bail, for which an opportunity had been provided to them vide last order. Keeping quiet, not obeying the order passed by the Court, shows the adamant attitude on the part of the petitioners.

As regards the authorities referred to by the senior counsel

for the petitioners, those do not come to the help of the petitioners in any manner, due to different facts, circumstances and context in which the observations had been made. Certainly there is no ground to recall the order or grant more time to the petitioners to surrender in the trial Court, with a direction to the trial Court to decide the application for regular bail on the same day, as has been submitted by the senior counsel today in the Court.

An absconder cannot be permitted to appear or surrender in the trial Court on his own conditions and as per his convenience. Under these circumstances, the request for grant of more time by senior counsel for the petitioners to surrender and issuance of direction to the trial Court to decide the application for bail on the same day, cannot be accepted. That request is declined.

Since the petitioners have not complied with the direction to surrender, given by last order, the petition is bound to fail and is dismissed accordingly.

25.5.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No