

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

(PROCEEDINGS THROUGH V.C.)

220

CRM-M-10936-2020

Date of decision : 24.11.2021

Natu Ram and another

Petitioners

V/S

Triveni Chemical and Industries

Respondents

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Surinder Garg, Advocate for the petitioners.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of order dated 13.01.2020 (**Annexure P-3**) passed by learned Judicial Magistrate Ist Class, Faridkot in Complaint No.NACT 180 of 2018 titled as 'Triveni Chemical and Industries Vs. M/s Guru Nanak Pesticides and Another' whereby the petitioners have been declared as proclaimed persons.

Brief facts of the case are that the respondent-complainant has filed complaint under Section 138 of the Negotiable Instruments Act, 1881 against the petitioners alleging that on different dates the petitioners had purchased pesticides from the complainant, respondent herein, and as on 21.01.2017 a sum of Rs.4,61,054/- was due against the petitioners. In discharge of the liability, the petitioners issued a cheque No.647560 dated 05.12.2017 amounting to Rs.4,50,000/- in favour of the respondent but on presentation of the same, it was returned with the remarks 'Funds Insufficient'. The Trial Court

summoned the petitioners and issued non-bailable warrants many times. Since the petitioners were not served through ordinary process, consequently, vide order dated 24.09.2019 (Annexure P-2), proclamation under Section 82 of the Cr.P.C. was issued against the petitioners for 13.01.2020. Despite the proclamation issued by the Trial Court, the petitioners did not appear. Vide order dated 13.01.2020 (Annexure P-3), the Trial Court declared the petitioners as proclaimed persons. Aggrieved against the impugned order dated 13.01.2020, the petitioners have filed the present petition for quashing of the same.

Learned counsel for the petitioners has argued that in the complaint made by the respondent, the address of the petitioners was given as Village Killian Wali (Block Lambi), District Sri Muktsar Sahib where the petitioner's firm was earlier working but the said shop was closed by the petitioners. As the proper address has not been given in the complaint, the petitioners were never served through ordinary process and they never came to know about the pendency of the complaint case against them. Therefore, the impugned order is liable to be quashed.

I have heard learned counsel for the petitioners and gone through the paper-book.

I am not impressed by the submissions of the learned counsel for the petitioners. Apparently, there is nothing on record to show that the petitioners have closed their business and shifted somewhere else from the address given in the complaint. From the order dated 24.09.2019 (Annexure P-2) passed by the trial court, it transpires that despite issuance of non-bailable warrants many times,

the presence of the petitioners could not be procured and therefore, the trial court was constrained to adopt substituted mode of service thereby issuing proclamation under Section 82 of the Cr.P.C. The proclamation was issued on 24.09.2019 requiring the petitioners to appear before the Court on 13.01.2020. As per statement of serving official Constable Gurpreet Singh, the proclamation of the petitioners was duly served on 10.12.2019 directing the accused to appear before the Court on 13.01.2020 giving 30 days period to procure their presence. However, despite issuance of proclamation, the petitioners did not appear before the Trial Court on 13.01.2020 and they were rightly declared proclaimed persons vide order dated 13.1.2020 (Annexure P-3) passed by the trial court. It appears that the petitioners have been intentionally and deliberately avoiding the process of Court and as such the Trial Court has rightly adopted substituted mode of service by declaring the petitioners proclaimed persons under Section 82 of the Cr.P.C. Moreover, discretionary power under Section 482 of the Cr.P.C. has to be exercised scarcely and judiciously in case of persons declared proclaimed offenders under Section 82 of the Cr.P.C. I do not find any material illegality in the impugned order dated 13.01.2020 passed by learned Judicial Magistrate First Class, Faridkot.

In view of the above, this petition is dismissed.

24.11.2021

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**(ASHOK KUMAR VERMA)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No