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

CRM-M-49818-2021

Date of decision : 29.11.2021

Bimalpreet Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amit Arora, Advocate for the petitioner.

Mr. Sukhbeer Hundal, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of impugned order dated 30.09.2021 (Annexure P-7) passed by the Judicial Magistrate Ist Class, Tarn Taran vide which the petitioner has been declared as proclaimed offender.

Learned counsel for the petitioner has submitted that in the present case, Sukhbir Singh had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) for the alleged dishonour of the cheque amounting to Rs.2,00,000/-. He has further argued that even perusal of the complaint as well as memo of parties would show that the complete address of the petitioner has not been given in the complaint. Further reference has been made to zimni orders

dated 03.08.2019 to 26.02.2020 to show that theailable and non-ailable warrants had been issued against the petitioner without due service being effected. Reference has also been made to zimni orders dated 15.04.2020 to 09.10.2020 to show that the matter was thereafter being adjourned on account of COVID-19 pandemic. It is further argued that on 09.07.2021, it was observed by the trial Court that the proclamation issued against the accused had not been received back and fresh proclamation was issued against the accused for 13.08.2021. On 30.09.2021, when the impugned order was passed, it had specifically been mentioned by the trial Court that the proclamation issued against the accused/petitioner had been received back effected on 13.09.2021 and statement of serving official was also recorded on 13.09.2021 and the case had been fixed for the said date i.e. 30.09.2021 for awaiting the presence of the accused/petitioner and since the petitioner had not appeared, thus, he was declared as proclaimed offender.

Learned counsel for the petitioner has submitted that even perusal of the impugned order dated 30.09.2021 (Annexure P-7) would show that the period of 30 days, as is mandated under Section 82 of Cr.P.C., from the date of effecting the proclamation to the date of appearance, had not been given. He has relied upon **judgment dated 17.11.2021** passed by this Court in case **titled Rahul Dureja and another Vs. State of Punjab**, to contend that it is necessary for the 30 day period to be given to the accused for appearance from the date of issuance of proclamation/affixation and has further submitted that the petitioner is ready to appear before the trial Court within a period of 15 days from today and further undertakes to appear on each and every date, except on the dates when he is personally exempted

from appearing before the Court. It is also argued that although the delay in proceedings is not on account of any act of the petitioner, but still, in order to compensate the complainant, the petitioner is ready to pay a sum of Rs.10,000/- to the complainant within a period of 15 days from today.

Notice of motion to respondent No.1 only.

On advance notice, Mr. Sukhbeer Hundal, AAG, Punjab, appears and accepts notice on behalf of the State/respondent No.1 and has submitted that he is fully prepared to argue the matter and assist this Court and has opposed the present petition for quashing of the impugned order. He has submitted that in the present case, the petitioner has been declared as proclaimed offender and the matter has been delayed on account of the said fact.

This Court has heard the learned counsel for the parties and has perused the paper book.

A perusal of the record, moreso, the zimni orders would show that the petitioner had not been duly served and the bailable and non-bailable warrants had been issued without effecting due service. The matter was also adjourned on several dates on account of the COVID-19 pandemic. A perusal of the zimni orders would also show that as per the same, the proclamation issued against the petitioner had been effected on 13.09.2021 and the date fixed for his appearance before the trial Court was 30.09.2021 and thus, even a clear 30 day period had not been given to the petitioner for his appearance before the trial Court. The same is in violation of the provisions of Section 82 of Cr.P.C. This Court in Rahul Dureja's case (Supra) has held as under:-

“7. The proclamation dated 09.03.2018 (Annexure P-9) would show that the date fixed in the same was 25.04.2018 whereas, as per the statement of Makhan Singh, PHG dated 25.04.2018 (Annexure P-10), affixation had been done on 15.04.2018 and thus, clear period of 30 days has not been given to the petitioners for appearance. In **Shokat Ali's** case (Supra) and **Inderjit Dhamija's** case (Supra), it was held that a period of 30 days has to be given to the accused for appearance, from the date of the publication/affixation. Para 17 in **Inderjit Dhamija's** case (Supra) is reproduced hereinbelow:-

“17. Furthermore, in the present case vide order dated 02.08.2019 proclamation was ordered to be published against the petitioners under Section 82 of the Cr.P.C. requiring the petitioners to appear before the Court on 04.09.2019. The proclamation was published by SI Dharampal on 04.09.2019 and the petitioners did not get statutory minimum period of thirty days for their appearance before the Court on 04.09.2019. Vide order dated 04.09.2019 learned Chief Judicial Magistrate, Karnal adjourned the case to 05.10.2019 for awaiting the appearance of the petitioners on the ground that statutory period of thirty days had not elapsed. Learned Chief Judicial Magistrate, Karnal could not extend the time by simply adjourning the case for awaiting appearance of the petitioners and was mandatorily required to issue the proclamation again for publication thereof in accordance with the provisions of Section 82(2) of the Cr.P.C.. This conclusion is supported by judicial precedent reported as *Ashok Kumar Vs. State of Haryana and another* : 2013 (4) RCR (Criminal) 550.”

8. *It is, thus, apparent that the proceedings declaring the petitioners as proclaimed persons are bad on the said account alone and thus, the registration of the FIR under Section 174-A of the IPC is illegal.”*

A perusal of the judgment reproduced hereinabove would show that after considering the various judgments passed by Coordinate Benches of this Court, it had been observed that the clear period of 30 days was required to be given from the date of effecting the publication/affixation of proclamation to the date of appearance. In the present case, since the same has not been given, the impugned order deserves to be set aside but the same would, however, be subject to the petitioner appearing before the trial Court within a period of 15 days from today and submitting the bail bonds/surety bonds to the satisfaction of the trial Court.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and impugned order dated 30.09.2021 (Annexure P-7) passed by the Judicial Magistrate Ist Class, Tarn Taran is hereby quashed/set aside. The same is, however subject to the petitioner appearing before the trial Court within a period of 15 days from today and submitting the bail bonds/surety bonds to the satisfaction of the trial Court and also subject to his appearing on each and every date before the trial Court except on the dates when he is personally exempted from appearance by the Court and also subject to the petitioner preparing a demand draft in favour of the complainant of an amount of Rs.10,000/- and submitting the same within a period of 15 days from today before the trial Court.

It would be open to the complainant/respondent No.2 to move an application for release of the said amount of Rs.10,000/- in his favour

and the trial Court is directed to release the same in favour of the complainant/respondent No.2 on an application moved by the complainant/respondent No.2. It is made clear that in case, the said draft amounting to Rs.10,000/- in favour of respondent No.2/complainant is not submitted before the trial Court within the aforesaid time and in case, the petitioner does not appear before the trial Court within a period of 15 days as has been directed, then the present petition would be deemed to have been dismissed.

In this case, notice has not been issued to respondent No.2/complainant as no order, prejudicial to the rights of respondent No.2/complainant, is being proposed to be passed by this Court and issuance of notice would further delay the matter which would cause prejudice to the complainant and since the main purpose is to make the petitioner appear before the Court, thus, the present petition is disposed of without issuance of notice to respondent No.2/complainant.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

29.11.2021*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**