

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

251

Date of decision: 05.08.2022

1. CRM-M-14929-2018

NAVNEET MALHOTRA AND ANR.Petitioners

Versus

M/S BIBBY FINANCIAL SERVICES INDIA PVT. LTD.
.....Respondent

2. CRM-M-17483-2018

NAVNEET MALHOTRA AND ANR.Petitioners

Versus

STATE OF HARYANARespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present : Mr. K.S.Nalwa, Advocate and
Mr. Yajur Sharma, Advocate
for the petitioners in both the cases.

Mr. Tanuj Sharma, AAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. Since both the petitions arise from a common thereto order dated 01.07.2014, passed by the learned Judicial Magistrate First Class, Gurgaon, whereby the petitioners were declared as proclaimed persons, and, consequent thereto, orders were rendered, for the registration of an FIR, under Section 174-A of the IPC, at Police Station Sushant Lok, District Gurugram, thereupon, both the petitions are amenable for a common order being rendered thereons. Both the above are prayed to be quashed, and, set aside.

2. The learned counsel appearing for the petitioners submits, that though Criminal Complaint bearing No. 5174 of 2013 titled as “M/s Bibby Financial Services India Pvt. Ltd. Vs. M/s Santosh Box Factory Private Limited and others”, constituting therein an offence under Section 138 of the Negotiable Instruments Act, has completely terminated, as an order of composition has been recorded, on anchor, of a settlement made amongst the concerned, and, in pursuance whereof, the accused stands acquitted. A copy of the above order dated 18.11.2021 is filed today in the Court, and, is taken on record, and, is reproduced hereinafter.

“Ld. Proxy Counsel for complainant submits that the present matter has been settled between both the parties and the complainant has received the entire settlement amount in this matter. Counsel for complainant has stated that she has instructions from the complainant to withdraw the present matter.

Let statement of AR for complainant be recorded to this effect.

Statement of AR for complainant recorded.

In view of the statement of AR for complainant, the present matter stands compounded and disposed of. Accused stands acquitted of the offence u/s 138 N.I. Act.....”

3. Even though after termination of the complaint, there was no requirement of any personal appearance, hence being made by the accused before the learned trial Judge concerned. However, since the learned trial Magistrate concerned, during the pendency of the complaint, had made an order comprised in Annexure P-9, declaring the present petitioners as proclaimed offender(s), therefore the effect of the above stigmatic order still survives. Though, the appropriate course for the accused was to, at the time of the above order of acquittal being

recorded, to make a motion before the learned trial Judge concerned, to recall the above order, as the complaint stood completely terminated. However, the above motion was not then made.

4. The reason for not making the above motion, nor any order being rendered thereon, appears to become founded upon the factum that in pursuance of the order recorded in Annexure P-9, there was a direction made to the SHO concerned, to institute an FIR under Section 174-A of the IPC, against the accused. Therefore, only upon the conclusion of trial, upon the above offence, and, upon a verdict of acquittal becoming recorded, rather the stigmatic allegations contained therein rather would become erased.

5. The instant petition as above stated, seeks to quash Annexure P-9. However, before proceeding to quash the above order, it is relevant to bear in mind, that prior thereto, the learned trial Judge, as revealed by Annexure P-6, had strived to procure the personal appearance before him, of the accused, through the mode of issuance and, executions of non-bailable warrants, upon him, but the non bailable warrants remained un-executed. Therefore, he was led to conclude that the accused be summoned through issuance of a proclamation notice.

6. However, it yet concluded that since the accused, is residing in a far flung area, which is outside the jurisdiction of the Court, therefore, since it would be difficult to serve, upon him, the proclamation notice in an ordinary manner. Consequently, the learned trial Judge proceeded to place reliance, upon, Section 82(2)(ii) of the Cr.P.C., and, as such proceeded to order for the printing of the

proclamation notice in a daily newspaper(s).

7. The above order became complied with, and, the proclamation notice became printed in daily newspaper(s), and, given the accused, since 30 days elapsing from the printing of the proclamation notice in a daily newspaper, rather not causing his appearance, before the learned trial Judge, thereupon, he proceeded to declare the present petitioners as proclaimed persons. Moreover, he also directed that an FIR against the accused, for theirs committing an offence, under Section 174-A IPC, be registered, at the police station concerned.

8. The above recoured mode by the learned Judicial Magistrate, has resulted in a gross breach being caused to the relevant mandate comprised in Section 82 (2)(i) of the Cr.P.C., provisions whereof become extracted hereinafter.

“82. Proclamation for person absconding.—

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:—

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such

person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1)."

9. Sub Section (2) of Section 82 Cr.P.C., commences with a mandatory overtone, and, therefore enjoins that all the contents embodied in clause (i) thereof, become co-jointly complied with. However, apparently no compliance is made to the mandate embodied in clause (i) of Sub Section (2) of Section 82 Cr.P.C., but yet the learned trial Magistrate proceeded to place reliance, upon, clause (ii) of sub section 2 of Section 82 Cr.P.C..

10. The above placed reliance upon clause (ii) of sub section (2) of Section 82 Cr.P.C, would be an apt reliance, only if the learned trial Magistrate concerned, had also meted the apposite peremptory compliance, viz-a-viz, the mandate embodied in clause (i) of Sub Section (2) of Section 82 of the Cr.P.C. In other words, only if compliance qua sub section, (2)(i), of Section 82 of the Cr.P.C., was also made, thereupon, sub section (2) clause (ii), an, additional thereto

provision, for the requisite purpose, may have been simultaneously or there alongwith, hence become capitalized by the learned trial Judge concerned, otherwise not.

11. Since, the learned trial Magistrate concerned, without meteing the imperative compliance to the peremptory mandate carried in sub section 2(i) of Section 82 of the Cr.P.C., rather proceeded to straightway draw reliance upon clause (ii) of Sub Section (2) of Section 82 of the Cr.P.C., therefore, there is a gross breach caused to the mandate of sub section (2)(i) of Section 82 of the Cr.P.C., whereas, its compliance was necessary, and, also though compliance of clause (ii) of sub section (2) could have been made, but reiteratedly, compliance thereto was to be made, only in addition to or simultaneously alongwith compliance being meted to the peremptory mandate enshrined in sub section (2)(i) of Section 82 Cr.P.C., otherwise not, and not independently therefrom.

12. However, the only reason which has been meted by the learned Magistrate, to independently mete compliance to Section 82(2)(i) of the Cr.P.C. is embodied in the factum, that the petitioners are residing in a far flung area, outside the jurisdiction of the Court, but yet when the petitioners were not in a foreign land, thereupon, rather when through the aegis of the process serving agency of the Court, within whose jurisdiction, the petitioners were at the relevant time, hence residing, hence the relevant service through ordinary mode could have been caused upon them. In sequel, when the learned trial Magistrate could have yet proceeded, to prior to relying upon clause (ii) carried in sub section (2) of Section 82 Cr.P.C., mete compliance to

clause (i) of sub section (2) of Section 82 Cr.P.C., especially when given the widest publicity to the publication notice, upon, its becoming printed in daily newspapers, would bring it within the knowledge of a large swathe of population, rendering open the bafalment, upon them, of the ill consequence of immense trauma being caused to the reputation of the petitioners. Therefore, its recourse was to be avoided, rather than being straightway adopted, and, as such the adoption of the recourse (supra) through the making of the impugned order makes it, ridden with a vice of arbitrariness.

13. The very purpose of clause (ii) of sub section (2) existing separately from clause (i) of sub section (2), is that, only when in the most difficult situation, when otherwise not through any recourse being made to clause (i) of sub section (2) of 82 Cr.P.C., the relevant purpose would become served, thereupon, the adoption of the above made recourse would be valid, and, that too when made in a most thoughtful, and, judicious manner, especially to save an immense damage being caused to the reputation of the accused concerned, given the printing of the publication notice in a daily newspaper. For the above breach being caused to the peremptory mandate borne in clause (i) of sub section (2) of Section 82 Cr.P.C., the order directing the printing of the publication notice, in the daily newspaper, hence becomes construable to be made, with a gross non application of mind, and, also in a judicially unwise manner.

14. For the above stated reason, the impugned order carried in Annexure-9 is quashed, and, set aside, and, the consequent therewith directions as made therein, for registration of an FIR against the present

petitioners, under Section 174-A IPC, are also quashed, and, set aside, with the consequent effect, that the FIR (supra) containing an offence under Section 174-IPC, also becomes amenable for being quashed, and, is quashed accordingly.

05.08.2022
kavneet singh

(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

:

Yes/No
Yes/No