

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

Sr. No.121

CRM-M-26831-2021

Date of decision : 11.11.2022

Raman Preet Kaur

.....Petitioner(s)

VERSUS

State of Haryana and another

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Kunal Dawar, Advocate for the petitioner.

Mr.Tanuj Sharma, AAG, Haryana

Mrs.Kiran Bala Jain, Advocate for respondent No.2

AMAN CHAUDHARY, J.

The present petition under Section 482 Cr.P.C. has been filed seeking quashing of the order dated 28.5.2018, Annexure P-7, passed by Judicial Magistrate, 1st Class, Gurugram, vide which the petitioner has been declared proclaimed person in case a complaint case No.NACT No.2013 of 2017, dated 04.02.2017, under Sections 138/142 of the Negotiable Instruments Act, 1881 (for short 'NI Act').

Learned counsel submits that a criminal complaint under Sections 138 /142 of NI Act, was filed against the petitioner, wherein the averments were made that the loan facility was availed, which was disbursed to the petitioner, however, the monthly installment of repayment thereof, vide cheque dated 22.11.2016 got dishonoured with remarks

“account blocked”, vide return memo dated 25.11.2016. Consequently,

summoning order dated 23.2.2017, Annexure P-2 was passed. He further submits that the bailable and non-bailable warrants issued to the petitioner were received back unserved, on account of which, the petitioner did not appear in the said complaint, that led to passing of the impugned order dated 28.5.2018, Annexure P-7, whereby the petitioner was declared as proclaimed person. Learned counsel further draws the attention of the Court to the order dated 21.3.2018, Annexure P-4 passed by the trial Court to contend that the date of appearance mentioned therein was 19.4.2018, which was not a complete period of 30 days as required by Section 82 Cr.P.C. It is his further contention that the executing constable vide his statement dated 19.4.2018, Annexure P-5 had also mentioned the date of pasting of the publication for accused as 11.4.2018 for his appearance and that proclamation was fixed for 19.4.2018. He further submits that the trial Court vide order dated 19.4.2018 had recorded the proclamation issued against the accused received back executed, the statement of executing constable recorded and thus, adjourned the case to 28.5.2018 for presence of the accused. In this regard, the learned counsel would submit that the proclamation Annexure P-4 giving less than 30 days; the period of 8 days given for appearance as per the statement of the executing constable, Annexure P-5 as also, the order passed by the trial court adjourning the case to 28.5.2018, merely so that the period of 30 days is completed, are illegal. He further submits that the absence of the petitioner before the trial Court was neither intentional nor deliberate, however, was for the reasons aforesaid. It is his submission that the petitioner is ready and willing to surrender before the Court concerned for which only one opportunity is

being sought. To buttress his submission, he places reliance on the judgments in the cases of **Ashok Kumar vs. State of Haryana and another** 2013(4) RCR (Crl.) 550, Krishan vs. State of Haryana, CRM-M-15622-2021, Rohit Kumar @ Raju vs. State of NCT, Delhi 2008(1) RCR (Crl.) 101, as also on an order dated 9.4.2021, Annexure P-11, of this Court passed in a petition i.e. CRM-M-15728-2021, titled as **Davinder Singh Chawla and another vs. State of Haryana and another** filed by the petitioner, whereby in another similar complaint case, set aside a similar order declaring the petitioner and her husband as proclaimed person, passed by the trial Court in complaint NACT No.5564 of 2016.

Reply filed on behalf of respondent No.2 is taken on record. She submits that she has no objection, if the prayer of the petitioner to the extent a direction is issued to the petitioner to surrender before the trial Court.

On the other hand, learned State counsel submits that the proclamation proceedings were rightly carried out and the said order is maintained. He however, was unable to produce any document showing that before declaring the petitioner as proclaimed person, he was duly served in accordance with the provisions.

Heard.

The very purpose of issuance of summons, warrants etc. is to compel and secure the presence of the accused to face trial and establish the rule of law so as to ensure finalization of the proceedings.

Admittedly, vide order dated 21.3.2018, the proclamation was issued against the petitioner at the address mentioned in the complaint,

which was pasted on 11.4.2018, to appear before the Court on 19.4.2018. Thereafter, on 19.4.2018, only after recording the statement of Executing Constable, the case was simply adjourned by the trial Court for 28.5.2018 for appearance, which is in violation of the provisions of Section 82 Cr.P.C. as the publication of the proclamation was less than prescribed period of 30 days, which would not be made up by adjourning the date of hearing in the case. Furthermore, the petitioner was served through pasting of warrants on the address mentioned in the complaint but well before the same, the petitioner had shifted from the said address as mentioned in para 11 of the petition, which finds corroborated by the electricity bill, Annexure P-9, issued in the name of the husband of the petitioner, where they were residing since 2015. Thus, the proclamation proceedings without effecting service upon the petitioner as well as being in violation of Section 82 Cr.P.C. as the mandatory period of 30 days of publication of proclamation had not been provided, were not justified. However, still it is incumbent upon her to join the proceedings before the trial Court. Considering the fact that the absence of the petitioner being not willful or deliberate and her readiness and willingness to surrender; the complainant has given his no objection to the prayer made in this regard and thus, no prejudice shall be caused to any of the parties, in case the petitioner is granted one opportunity, to surrender before the trial Court. It will even otherwise, facilitate the cause of the complainant in early culmination of the proceedings in the complaint. Therefore, in order to secure the ends of justice and finding orders referred to above, being applicable to the instant case, the present petition deserves to be allowed.

In view of the peculiarity of the facts and circumstances of this case and the orders referred to hereinabove, consequently and as a sequel thereto, the present petition is allowed. The impugned order dated 28.5.2018, Annexure P-7, is set aside. The petitioner is directed to surrender before the trial Court within a period of two weeks from today and in case an application for bail is filed, the trial Court may decide it expeditiously.

Before parting with this order, it is made abundantly clear that in case the petitioner does not adhere to the conditions aforesaid, the present petition shall be deemed to have been dismissed without any further reference to this Court.

(AMAN CHAUDHARY)
JUDGE

11.11.2022

gsv

Whether speaking/reasoned : Yes / No

Whether reportable : Yes/ No