

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

Sr. No.121

CRM-M-26834-2021 (O&M)

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 for setting aside the order dated 29.11.2019, Annexure P-6, passed by Judicial Magistrate, 1st Class, Gurugram, vide which the petitioner has been declared proclaimed person in case a complaint bearing NACT No.1563 of 2017, dated 02.02.2017, under Sections 138/142 of the Negotiable Instruments Act, 1881 (for short 'NI Act').

Learned counsel submits that a criminal complaint under Section 138/142 of NI Act, was filed against the petitioner, wherein the averments were made that the loan facility was availed of, 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 11.4.2017, 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 29.11.2019, Annexure P-6, whereby the petitioner was declared as proclaimed person. Learned counsel submits that the aforesaid impugned order is illegal and bad in the eyes of law, inasmuch as the bailable and non-bailable warrants were never served upon the petitioner, the same having got issued at the address mentioned in the complaint i.e. D-6/93, Block D6, Rohini, Sector 6, R-2/9, Raj Nagar, Ghaziabad, Uttar Pradesh, whereas the petitioner had left the said address in the year 2015, when she had started residing at Noida, to substantiate it, the learned counsel makes a reference to the electricity bill in the name of husband of the petitioner of January, 2016 attached as Annexure P-7. It is his case that proclamation proceedings not having been carried out at the proper address, the petitioner was rightly not aware of their initiation against her, hence her absence. Still further he submits that the proclamation was pasted at the Court premises on 28.10.2019, however, the said date was a holiday being Vishkarma day. 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, learned counsel places reliance on an order dated 9.4.2021, Annexure P-10, 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 be maintained. He however, was unable to produce any document showing that the 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, though, 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 5 of the petition, which finds corroborated by the electricity bill, Annexure P-7, 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, 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 its 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 order 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 order referred to hereinabove, consequently and as a sequel thereto, the present petition is allowed. The impugned order dated 29.11.2019, Annexure P-6, 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