

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-48253 of 2017 (O&M)
Date of Decision: 16.08.2022.

Parveen Kaur

...Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. A.S.Gulati, Advocate
for Mr. Deepak Bhardwaj, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. DAG., Punjab.

Mr. Naginder Singh Vashist, Advocate
for respondent no.2.

AVNEESH JHINGAN J. (ORAL)

This is a petition under Section 482 Cr.P.C. for quashing of order dated 23.10.2017, declaring the petitioner as Proclaimed Person in NACT No. 283/2016 dated 25.07.2016, titled 'the Ropar Central Coopeartive Bank (RCCB) Vs. Parveen Kaur', under Section 138 of the Negotiable Instruments Act (for short 'the Act').

Learned counsel for the petitioner submits that the complaint was filed by respondent No.2 as the petitioner defaulted in repayment of loan. Later, the loan was cleared and no objection certificate was issued on 09.08.2017. The Complaint was withdrawn by the Bank in December, 2017. It is argued that without service of the notice, the proclamation was issued under Section 82 Cr.P.C. The contention is that from the zimini orders it is evident that the petitioner was not served and the matter was fixed for filing the correct address.

Correct address was not filed but on an application filed by the complainant the warrants of arrest were issued on 12.04.2017. Thereafter impugned order was passed issuing direction to the SHO concerned to register FIR under Section 174 -A IPC.

Learned counsel for respondent no.2 submits that the loan account was settled and the complaint under Section 138 of the Act was withdrawn.

Gainful reference in this regard can be made to the decisions rendered by this Court in ***Vikas Sharma Vs. Gurpreet Singh Kohli and another, 2017 (3) LAR 584, Microqual Techno Limited and others Vs. State of Haryana and another, 2015 (32) RCR (Criminal) 790 and Rajneesh Khanna Vs. State of Haryana and another, 2017 (3) LAR 555***, wherein, in similar circumstances, this Court held that since the main petition was filed under Section 138 of the Act stands withdrawn in view of an amicable settlement between the parties, therefore continuation of proceedings under Section 174-A of IPC, shall be nothing but an abuse of the process of law.

Section 82 Cr.P.C. is produced as under:-

“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 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].”*

The Apex Court in **Inder Mohan Goswami and another Vs. State of Uttaranchal & others ; 2008 AIR (Supreme Court) 251, held:**

“51. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issueailable- warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the courts proceeding intentionally, the process of issuance of the non-ailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-ailable warrants.”

Despite of providing repeated opportunities to respondent no.2 to file the correct address, needful was not done. An application was filed that there is no other address of the petitioner except the one mentioned in the complaint and he is willingly avoiding the service. Without therebeing any basis, to conclude that petitioner was avoiding service the court proceeded to issue warrant of arrest and thereafter passed the impugned order dated 23.10.2017.

The petition is allowed and order impugned in the petition is set aside.

16.08.2022
rekha sharma

(AVNEESH JHINGAN)
JUDGE

Whether reportable:	Yes
Whether speaking/non-speaking:	Yes