

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

108

CRM-M No. 29435 of 2021
Date of Decision: 09.11.2022

Atul Goel and anotherPetitioners

Vs.

M/s Harakh Chand Shanker LalRespondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. S.S.Gill, Advocate for the petitioners.

ANOOP CHITKARA J.

Complaint No.	Dated	Section	Titled
NACT/41/18	Nil	138 of Negotiable Instruments Act, 1881	M/s Harakh Chand Shanker Lal Versus Richi Rich Agro Foods Private Limited and others

As per the contention recorded in order dated 28.07.2021, the petitioners expressed their willingness to pay an amount of Rs. 6,05,000/-. Counsel for the petitioners submits that now only around an amount of Rs. 1,80,000/- is pending and they are ready to deposit the same within four month.

Counsel for the petitioners further submits that he would be confining his prayer to the extent of quashing of proclamation order dated 17.07.2019 (Annexure P-3) reserving his right to take other legal remedies for remaining prayers.

2. Petitioner was arraigned as an accused in the above-captioned matter. On failure to serve the petitioner through the ordinary process, including summons, bailable warrants, and even non-bailable warrants, the concerned court finally proceeded against the petitioner under section 82 of CrPC and declared the petitioner a proclaimed offender vide order dated 17.07.2019 (Annexure P-3).
3. The point to which the petitioner wants to draw the attention of this court is that the absence was not willful and was due to factors beyond the petitioner’s control.
4. The primary object of service is to secure the accused's presence in trial. The petitioner has approached this court on its own, establishing the bonafide at this stage. Without commenting on the case's merits, and in the facts and circumstances peculiar to this case,

and also for the reasons mentioned above, the ends of justice would meet. Furthermore, without adjudicating the maintainability of this petition under section 482 CrPC and leaving that question open; given the explanation offered by the accused coupled with the facts and circumstances peculiar to this case, a balanced approach would work as an incentive, a catalyst, speeding up the process, and bringing the guilty to Justice and Justice to the guilty. Thus, exercising the inherent powers under section 482 CrPC, this court deems it appropriate to grant the following limited relief to the petitioner, subject to compliance with the conditions mentioned in this order.

5. Given the above, the petitioner has made a case on the preponderance of probability that neither any sincere attempt was made to execute the warrants nor did the petitioner have any knowledge about appearance as contemplated under section 82 CrPC. Thus, the order is arbitrary and did not afford reasonable opportunity as mandated under Section 82 of CrPC

6. Consequently, the impugned order of proclamation dated 17.07.2019 passed by Id. SDJM, Ellenabad Annexure P-3 shall remain stayed for fifteen days, and the non-bailable warrants issued against the petitioner in the FIR captioned above shall not be enforced for fifteen days, and in case the petitioner complies with this order, then warrants shall also stand recalled. **The petitioner is directed to appear before the concerned court within fifteen days from today.** The petitioner shall be at liberty to apply for bail before the trial court, and the concerned court shall release the accused on bail on the same date subject to furnishing bonds of its satisfaction. Suppose the petitioner fails to appear within fifteen days from today, in that case, it might be considered that if released on bail, it may not be feasible to produce the accused to face the trial, and consequently, this order shall be recalled automatically under section 362, read 482 CrPC, without further reference to this court.

7. Petitioners are directed to deposit entire outstanding amount around Rs. 1,80,000/- till 01.03.2023. In case, the said amount is not deposited on or before 01.03.2023, then this order shall stand recalled automatically without any further reference to this Court.

Petition allowed subject to the compliance mentioned above.

Trial be expedited.

(ANOOP CHITKARA)
JUDGE

09.11.2022
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.