

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

CRM-M-30931-2022 with
CRM-37108-2022
Date of decision: 11.10.2022

Abhishek GuptaPetitioner

versus

State of Haryana and anotherRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. J.P. Jangu, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

NAMIT KUMAR, J. (ORAL)

This petition has been filed under Section 482 Cr.P.C. for quashing of impugned order dated 23.02.2022 (Annexure P-13) passed by the learned Chief Judicial Magistrate, 1st Class, Bhiwani, whereby, the petitioner has been declared proclaimed person in complaint bearing COMA No.494 of 2019 titled as 'M/s Gupta Traders vs. Abhishek Gupta' filed by respondent No.2 under Sections 138 & 142 of the Negotiable Instruments Act, 1881.

On 19.07.2022, the following order was passed by the Coordinate Bench:-

“This is a petition seeking quashing of the impugned order whereby the petitioner has been declared proclaimed person in complaint bearing No. COMA No. 494 of 2019, titled as “M/s Gupta Traders v. Abhishek Gupta” under Sections 138 and 148 of the Negotiable Instruments Act, 1881.

Learned counsel for the petitioner on instructions submits that the petitioner in order to show his bona fide is ready to deposit Rs.10,000/- with the court concerned.

Let the petitioner appear before the court concerned tomorrow and on deposit of Rs.10,000/-, he shall be released on

bail. The amount so deposited shall be subject to outcome of the trial and shall be kept in FDR.

In case of non-appearance of the petitioner in trial, the amount shall be liable to be forfeited.

Adjourned to 11.10.2022.”

In terms of order dated 19.07.2022, the petitioner did not appear on 20.07.2022 nor deposited the amount of Rs.10,000/-. Now an application bearing CRM No.37108 of 2022 has been filed by the petitioner for grant of another opportunity to comply with the order dated 19.07.2022 by making vague averment that due to personal difficulty, as his uncle was passed away, the petitioner could not appear before the Court below in compliance with the order dated 19.07.2022.

On a pointed query to learned counsel for the petitioner with regard to the date of death of his uncle, no reply has come. It appears that the petitioner is intentionally dilly dallying the trial which is clear from the zimini orders passed by the trial Court from time to time, which are reproduced hereunder:-

“Earlier warrants of arrest of accused had been issued vide order dated 07.01.2020, however, later on looking into the prevailing circumstances of Pandemic Noval Coronavirus (Covid-19) showing leniency, Ld. Predecessor Court ordered court notice to be issued on 12.01.2021, which have not been received back in any form. In the given circumstance to my mind it would be rather judicious to issue warrants of arrest against the accused when the Covid-19 conditions are near normal. In view of this, fresh warrants of arrest be issued against accused for 15.11.2021.

Date of order: 08.09.2021”

“Warrants of arrest issued against accused received back with the report that he has not opened the shop from the last 1-1/2 years. The complainant submits that the accused is intentionally avoiding the service of process and he prayed that proclamation be issued on the last known address. Now, proclamation be issued against accused in terms of sub Section (2) of Section 82 of Cr.P.C. 1973, the proclamation shall be published as follows:

- a) It shall be publicly read in some conspicuous place of the town or village in which above named accused ordinarily resides:
- b) It shall be affixed to some conspicuous part of house or homestead in which the said accused ordinarily resides or to some conspicuous place of such town or village.
- c) A copy thereof shall also be affixed to some conspicuous part of the court house.

Now to come up on 21.01.2022 for presence of accused Abhishek Gupta through proclamation. That apart, report of Executing official regarding publication of the proclamation be also awaited for the date fixed after effecting proclamation U/s 82 Cr.P.C. issued against the accused.

Date of order: 15.11.2021”

“Proclamation issued against accused Abhishek Gupta received back duly executed. Statement of the Executing Constable namely HC Narender Kumar recorded to the extend that the proclamation was carried out on 04.01.2022. The mandatory period of 30 days has not been expired. Now, the case is adjourned to 23.02.2022, awaiting completion of mandatory period of 30 days. A long date is given awaiting the presence of the accused keeping in mind the prevalent Covid-19 circumstances.

Date of order: 21.01.2022”

“Today the case was fixed for presence of accused. Statement of executing constable has already been recorded on 21.01.2022 wherein stated proclamation was carried out on 04.01.2022. The requisite period of 30 days has now expired. Case called several time since morning but accused is not present. It is already 12-55 P.M. No further wait justified. Hence, accused Abhishek Gupta Proprietor M/s Gupta Brothers Stationers, 2637, Nai Sarak, Near Roshan Pura, Delhi is declared proclaimed person. Intimation of this order be sent to concerned SHO/Police Station. Now, to come up on 08.04.2022 for filing list of property of accused.

Date of order: 23.02.2022”

“Today the case was fixed for filing list of property of accused by the complainant. List of property of accused not filed. An adjournment is requested by learned counsel for the complainant. Heard and allowed. Now, to come up on 23.05.2022 for filing list of property of accused, subject to last opportunity.

Date of order: 08.04.2022”

“File taken up today as accused Abhishek Gupta appeared and moved an application for surrender and bail. Accused be taken into custody. Original file called from the concerned Ahlmad. Report of the Ahlmad perused in compliance of directions of Hon'ble High Court in judgment dated 11.03.2022 in CRM-M-52620 of 2019 titled as Kulwant Singh @ Sajan Vs. State of Punjab. Heard. Since, the offence allegedly committed by accused is bailable, accused Abhishek Gupta is admitted to bail on his furnishing bail bonds in the sum of Rs. 50,000/ with one surety in the like amount. Requisite bonds furnished, which are accepted and attested. Accused be released forthwith, if not required in any other case and he be directed to appear before the Court on 23.05.2022, the date already fixed for further proceedings. Necessary changes be made in CIS.

Date of order: 21.04.2022”

It is apt to mention here that notice in the original complaint was issued by the learned trial Court on 25.03.2019 (Annexure P-2). A perusal of the orders reproduced above would show that since, the issuance of notice in the complaint vide order dated 25.03.2019, the petitioner has only appeared on 21.04.2022 and, thereafter, again absented himself.

Since, the petitioner did not appear before the trial Court and proclaimed offender proceedings were initiated against him and FIR No.131 dated 15.05.2022 under Section 174-A of IPC was registered against the petitioner and now he has also not complied with the order dated 19.07.2022.

The Coordinate Bench of this Court in CRM-M-26957-2021 decided on 16.07.2021 titled as 'Sarabjit Singh versus State of Punjab and another (P&H)' has held that proclaimed offender who failed to associate with the trial proceedings, not entitled to invoke the inherent powers of the High Court to seek quashing of criminal proceedings.

Consequently, the present petition is dismissed with costs of Rs.20,000/- to be deposited with the Haryana Legal Services Authority within a period of 02 months from the date of passing of this order.

11.10.2022
Neha

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned
Whether reportable

:
:

Yes/No
Yes/No