

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

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Date of decision : 18.11.2022

(i)

CRM-M-48983-2022

Vijay Kumar

Petitioner

V/S

M/s Sher Singh Jai Parkash and another

Respondents

(ii)

CRM-M-50599-2022

Vijay Kumar

Petitioner

V/S

M/s Sher Singh Jai Parkash

Respondents

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Munish Mittal, Advocate for the petitioner.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petitions under Section 482 of the Code of Criminal Procedure, 1973 for quashing/setting aside of impugned order dated 11.12.2014 passed by learned Judicial Magistrate First Class, Karnal whereby the petitioner was declared proclaimed person and for quashing/setting aside the complaint case No.1748 of 2010 titled as 'M/s Sher Singh, Jai Parkash Vs. Vijay Kumar' filed under Section 138 of the Negotiable Instruments Act, 1881.

Brief facts of the case are that the complainant is running the shop of commission agent in the name and style of M/s Sher Singh

Jai Parkash at New Grain Market, Indri. The petitioner had been dealing with the complainant-firm since long and as per the account books of the complainant-firm, on 13.07.2005 a sum of Rs.1,38,300/- was due and payable by the petitioner. In partial discharge of his liability, the petitioner issued cheque No.610806 dated 07.06.2007 for sum of Rs.50,000/- in favour of the complainant. When the complainant deposited by the said cheque in the bank, the said cheque was dishonoured for the reason 'Insufficient Fund'. Thereafter, the complainant filed a complaint under Section 138 and 142 of the N.I. Act against the petitioner. On his non-appearance before the trial Court, the petitioner was declared proclaimed person vide impugned order dated 11.12.2014.

Learned Counsel for the petitioner submits that the petitioner has been falsely implicated in the case. The matter was amicably settled between the parties on 15.12.2012 and the petitioner was agreed to pay the cheque amount i.e. 50,000/- to the complainant. On 15.12.2012 the petitioner had paid a sum of Rs.25,000/- to the complainant. Remaining amount of Rs.25,000/- was also paid in cash to the complainant on 11.01.2013. Despite receiving the full amount, the complainant, just to grab the hard earned money of the petitioner, revived the complaint under Section 138 of the N.I. Act and got declared the petitioner as proclaimed person. Order dated 11.12.2014 was passed without following the proper procedure as prescribed under Section 82/83 of the Cr.P.C. Notice under Section 82 of the Cr.P.C. was not received by the petitioner and the summons were also affixed

outside the house where the petitioner was not residing. Even in the report dated 11.11.2014 it has been specifically mentioned that the petitioner is not residing at the address. The entire amount of cheque has already been paid by the petitioner before declaring him proclaimed person. The petitioner was not aware about the proclamation proceeding against him and when he came to know about the same, he immediately moved an application before learned Judicial Magistrate First Class, Karnal along with demand draft of Rs.25,000/- but the said application was declined on 11.10.2022. Non-appearance of the petitioner in the trial Court was neither intentional nor willful. The petitioner is ready and willing to pay the entire amount and settle the matter. Therefore, the present petitions may be allowed and complaint under Section 138 of the N.I. Act and all consequential proceedings arising therefrom may be quashed.

I have heard learned counsel for the petitioner and gone through the paper-book.

Perusal of the file shows that no sufficient reason has been given by the petitioner for his non-appearance before the Trial Court. The matter was of the year 2007 and more than 15 years has now elapsed from the date of issuance of cheque. The petitioner was declared proclaimed person on 11.12.2014 and now after a gap of more than 07 years, he has filed the present petitions for quashing of impugned order and complaint case which shows that the petitioner has already wasted the precious time of the Court and harassed the complainant.

As far as the contention of learned counsel for the petitioner that the service of proclamation under Section 82 of the Cr.P.C. was not effected to the petitioner is concerned, there is nothing on record to show that the summons were affixed outside the house which does not belong to the petitioner.

Furthermore, despite order dated 11.10.2022 passed by learned Judicial Magistrate First Class, Karnal, on the application filed by the petitioner, the petitioner did not appear/surrender before the Trial Court till date and has filed the present petitions before this Court.

Keeping in view the nature of averment and conduct of the petitioner, I do not deem it fit to quash the impugned order dated 11.12.2014 declaring the petitioner as proclaimed person and to quash the complaint case.

Accordingly, both the petitions are hereby dismissed.

18.11.2022

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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No