

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

119

CRM-M-57961-2022 (O&M)
Date of decision: 13.12.2022

RAJEEV KASHYAP

....Petitioner(s)

Versus

STATE OF UT & ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Poonam Singh Thakur, Advocate
for the petitioner.

Mr. P.S. Paul, Addl. PP, UT Chandigarh.

AMAN CHAUDHARY. J.

The present petition under Section 482 of the Cr.P.C. has been filed for quashing the impugned order dated 06.03.2019 (Annexure P-4), passed by Judicial Magistrate 1st Class, Chandigarh, whereby the petitioner was declared as proclaimed person.

Learned counsel for the petitioner contends that the complaint under Section 138 of the Negotiable Instruments Act was filed against the petitioner in the year 2016, however in 2018, a compromise between the parties on verbal basis had been arrived at which was reduced into writing Annexure P-1. As per the said compromise, the petitioner was ready to hand over the physical possession of two flats to respondent No.2. He says that the petitioner assuming and on having been assured by respondent No.2 that he will withdraw the complaint, did not do so. It is only when some police officers visited the house of the petitioner in his absence that he came to know of the pendency of the complaint and that he had been declared proclaimed person by the Court vide

order dated 06.03.2019 Annexure P-4. It is his further submission that the petitioner was never served and no proper procedure has been adopted to summon him. On so being done, the petitioner would have appeared before the trial Court and produced the copy of compromise deed. He filed anticipatory bail application which came to be dismissed by the Court of Sessions vide order dated 08.09.2022 Annexure P-5. He submits that the respondent No.2 had breached the terms and conditions of the compromise as he had not withdrawn the complaint in question.

He, however, submits that the petitioner is ready and willing to join the proceedings, and prays that one opportunity may be granted for the petitioner to surrender before the learned trial Court, which may even be, subject to payment of costs. In support of his arguments learned counsel for the petitioner relies upon the orders of this Court in CRM-M-38277-2022 dated 26.08.2022, in the case of “Surjit Singh Vs. State of Punjab”, CRM-M-39000-2022, titled as “Raghav vs. State of Punjab”, decided on 9.9.2022 and CRM-M-36490-2022, “Major Singh vs. State of Punjab”, decided on 15.9.2022.

Notice of motion to respondent No.1.

Mr. P.S. Paul, Additional Public Prosecutor, UT Chandigarh, who has appeared on receipt of advance copy of the petition, opposes the petition by submitting that the impugned order has been rightly passed by the learned trial Court.

In this case, notice has not been issued to respondent No.2-complainant as no order prejudicial to its rights, is being proposed to be passed by this Court.

Heard.

Adverting to the facts of the present case inasmuch as the petitioner

under the impression that the matter has been compromised and respondent No.2 having withdrawn the complaint, did not appear before the trial Court, leading to the passing of the impugned order, which appears to be justified explanation of absence. At times, the accused or his counsel can be prevented by sufficient reasons to put an appearance before the Court on a given date and every such absence cannot necessarily be construed as deliberate and willful. However, it is incumbent upon him to join the proceedings, before the trial Court, for the culmination of the same. Considering the fact that the absence of the petitioner being not willful or deliberate and his readiness and willingness to surrender and join the proceedings, in case one opportunity is granted to the petitioner, no prejudice shall be caused to any of the parties, rather his joining the proceedings would help expediting the trial. Thus, in order to make the ends of justice meet and finding judgments referred to above being applicable to the instant case, the present petition deserves to be allowed.

In view of the facts and circumstances of this case and the judgments referred to above, the impugned order dated 06.03.2019 (Annexure P-4), is set aside, subject to deposit of Rs.10,000/- with District Bar Association, Chandigarh. The petitioner is directed to surrender before the trial Court on or before 22.12.2022 and furnish his fresh bail/ surety bonds. On so doing, the trial Court shall release him on bail by imposing surety to its satisfaction. He is also directed to furnish an undertaking by way of his affidavit that he will appear on each and every date of hearing before the trial Court, unless specifically exempted by the Court. He shall also surrender his passport and will not leave the country without prior permission of the Court or the trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case.

Before parting with this order, it is made abundantly clear that in case the petitioner does not adhere to the aforesaid, the present petition shall be deemed to have been dismissed without any reference to this Court.

Disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

December 13, 2022

M.Kamra/GSV

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>