

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

CRM-M-57699-2022

Date of Decision: 13.12.2022

CHARANJIT BHATIA

...Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Amandeep Saini, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

The petitioner has filed the instant petition under Section 482 of the Code of Criminal Procedure for quashing the impugned order dated 06.07.2017 (Annexure P-8), vide which, he has been declared as a proclaimed offender on account of his non-appearance in case bearing **COMA 4897 of 2013** titled as ***Jaswant Singh Bhogal vs Charanjit Bhatia*** under Section 138 of the Negotiable Instruments Act, 1881, instituted on 02.03.2013 in the Court of Judicial Magistrate Ist Class, SBS Nagar (Annexure P-1).

Learned counsel for the petitioner has submitted that the petitioner has wrongly been declared as a proclaimed person and that too without complying with the provisions contained under Section 82 of the Code of Criminal Procedure. It is further submitted that the allegations levelled in the complaint are that Cheque bearing No.057270 dated

08.10.2012, amounting to Rs.75,000/- issued by the petitioner in favour of respondent No.2, has been dishonored. Learned counsel further submitted that the petitioner after grant of bail had been appearing regularly before the trial Court but on 14.03.2017, he did not appear before it as he was under impression that the complainant will withdraw the complaint as the matter had already been settled outside the Court after having made the payment of cheque involved. The contention of the petitioner finds support from the fact that the Presiding Officer, National Lok Adalat, SBS Nagar, vide order dated 13.08.2022 (Annexure P-9) has dismissed the complaint as withdrawn. Learned counsel further submits that due to non-appearance of the petitioner on 14.03.2017, he was declared as a proclaimed person vide order dated 06.07.2017 (Annexure P-8) passed by the learned Judicial Magistrate Ist Class, SBS Nagar. However, since the main petition filed under Section 138 of the Act stands withdrawn as settled, accordingly, the order declaring the petitioner as proclaimed offender cannot be sustained and is liable to be quashed.

Notice of motion.

On the asking of the Court, Mr. Vinay Kumar Gupta, Assistant Advocate General, Punjab, appears and accepts notice on behalf of respondent-State and raises no serious objection to the arguments raised by learned counsel for the petitioner. There is no denial or dispute regarding the amicable settlement between the parties and also the final order of withdrawal of the complaint.

At this stage, Mr. Ranbir Singh Sekhon, Advocate appears and accepts notice on behalf of respondent No.2-complainant and admits that he has already received the entire cheque amount. He further submits that he has no objection, if the present petition is allowed.

I have heard learned counsel for the parties and have perused the paper book with their able assistance.

Before considering the submission made by the respective counsel, it would be appropriate to refer to Section 82 of the Code of Criminal Procedure, which reads 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 has been issued by it has absconded or is concealing himself so that such 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.”

A perusal of above extracted Section 82 of Cr.P.C. would manifest that 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."*

Still further as per Section 82(3), the concerned Court is required to record a statement in writing to the effect that the proclamation was duly published on a specified day in the manner as specified in Clause (i) of Sub-Section 2 and the same shall be taken as conclusive evidence that requirements of Section 82 have been complied with and that the proclamation was published on such day.

In the instant case, the serving officer made the following service report :-

“ It is submitted that proclamation notice has been received for publication and I visited the address of accused at railway road PR2 education service along with Kamaljit Singh MC, above centre is closed from long time and the whereabouts of Charanjit Bhatia s/o Subhash Bhatia is not known. One copy of the proclamation notice was pasted outside the office of the accused and one copy has been affixed at common place at railway road and one copy has been affixed in the notice board of the court. Original copy is presented in court.”

A perusal of the above-said report would clearly indicate that the provisions contained in Section 82(2)(i) of the Cr.P.C. have not been complied with inasmuch as that one copy of the proclamation notice was pasted outside the office of the accused; one copy was affixed at common place at Railway Road and one copy was affixed on the notice board of the Court. However, the said proclamation was not read publicly in some conspicuous place of town or village in which the accused ordinarily resides. It is well settled that all provisions of Section 82(2)(i) of the Cr.P.C are to be mandatorily complied with cumulatively and not alternatively and non-compliance of even one provision would render the proclamation as bad. Thus, the endeavor of the serving officer to serve the proclamation notice upon the accused is deficient and cannot be sustained.

Moreover, the main complaint filed under Section 138 of the Act, wherein, the petitioner was declared as a proclaimed person, stands settled and was withdrawn vide order dated 13.08.2022 (Annexure P-9) passed by the Presiding Officer, National Lok Adalat, SBS Nagar.

In view of the aforementioned facts and circumstances, the impugned order dated 06.07.2017 (Annexure P-8) passed by the Judicial Magistrate Ist Class, SBS Nagar, vide which, the petitioner had been declared as proclaimed person is unsustainable in the eyes of law and the same is accordingly quashed.

The instant petition is allowed in the above-said terms.

All the pending miscellaneous applications, if any, stand disposed of.

December 13, 2022
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No