

CRM-M-57354 of 2022 :1:

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

113(2)

CRM-M-57354 of 2022
Date of Decision: December 09, 2022

Vyas Chawla

...Petitioner

Versus

State of UT Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Robin Singh Hooda, Advocate
for the petitioner.

AMAN CHAUDHARY, J.

The present petition under Section 482 of the Cr.P.C. has been filed for quashing of criminal complaint No.NACT/2951/2022 dated 29.04.2022 (Annexure P-1) titled "Davinder Singh Aulakh Vs. Vyas Chawla, under Section 138 of Negotiable Instrument Act and for further quashing of the impugned summoning order dated 30.04.2022 (Annexure P-2) and impugned order dated 22.08.2022 (Annexure P-3) vide which non-bailable warrants of the petitioner has been issued for 19.12.2022 by Judicial Magistrate Ist Class, Chandigarh.

Learned counsel at the outset restrict his prayer to only regarding the impugning of order dated 22.08.2022 (Annexure P-3) is concerned vide which non-bailable warrants of the petitioner have been issued for 19.12.2022.

Learned counsel *inter alia* contends that on account of disowner of cheques which purportedly were issued with regard to return of a friendly loan, petitioner was summoned in a complaint filed under Section

138 of the Negotiable Instruments Act. It is submission that no notice was served upon the petitioner and respondent No.2 had fraudulently got procured the signatures by showing that notice had been served upon him. It is his further submission that likewise the summons issued by the trial Court on 30.04.2022, Annexure P-2 which were never served upon the petitioner however, he submits that had he been received he would have duly appeared before the trial Court to contest the complaint.

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.

Mr. Ankur Bali, Additional PP, 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 his rights, is being proposed to be passed by this Court.

Heard.

The order of non-bailable warrants were issued against the petitioner vide order dated 22.08.2022 for 19.12.2022. The present petition has been filed on 05.12.2022 which shows the bona fide of the petitioner to appear before the trial Court and join proceedings.

The very purpose of issuance of non-bailable warrants, is to compel and secure the presence of the accused to face trial and establish the rule of law so as to ensure finalization of the proceedings.

Adverting to the facts of the present case inasmuch as the summons issued by the trial Court which were never served upon the petitioner, thus he could 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 22.08.2022,

Annexure P-3, is set aside, subject to deposit of Rs.10,000 with the Trial Court to be disbursed to the complainant. The petitioner is directed to surrender before the trial Court on or before 16.12.2022 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.

December 09, 2022

Rimpal

**(AMAN CHAUDHARY)
JUDGE**

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No