

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

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CRM-M-1486-2021 (O&M)

Date of decision: 19.09.2023

Suneel Jaiswal

....Petitioner

Versus

Harish and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Mohak Arora, Advocate for
Mr. Manish Soni, Advocate for the petitioner

None for respondent No.1

Mr. Dhruv Sihag, AAG Haryana

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 482 CrPC for quashing of Criminal Complaint No.4524/2015 dated 27.08.2015 titled as Harish vs. Mr. Suneel Jaiswal and Another, under Section 138 NI Act along with all other consequential/incidental proceedings therefrom including setting aside of impugned order dated 27.03.2018, passed by learned Judicial Magistrate 1st Class, Gurugram, whereby the application moved by petitioner for exemption from personal appearance, has been wrongly declined and thereby the bail granted to the petitioner, has been cancelled and non-bailable warrant has been issued against him as well as order dated 19.12.2018, whereby the petitioner has been declared as proclaimed person.

2. Learned counsel for the petitioner restricts his prayer to only quashing/setting aside of impugned orders dated 27.03.2018 and 19.12.2018,

Annexures P-5 and P-6 and as regards the challenge to the criminal complaint is concerned, he prays for grant of liberty to raise all pleas at the appropriate stage.

3. Learned counsel contends that the petitioner had surrendered before the trial Court on 09.06.2017 and was admitted to bail on furnishing the bail bonds in the sum of Rs.30,000/- with one surety, however, he could not furnish same, thus, the case was adjourned to 15.06.2017 for notice of accusation as well as furnishing surety bonds, whereupon, the case was listed for 27.03.2018, on which date, the petitioner being unwell was advised bed rest by his doctor, on account of which, he could not cause appearance and got filed an application for exemption from personal appearance only for that day, which was dismissed vide impugned order dated 27.03.2018. The non-bailable warrants were issued, which could not be executed as the petitioner was working as Senior Consultant Projects at Cloud Consultancy, Rajajipuram Lucknow, UP, whereas the warrants were issued at this address at Gurugram, where he being personally not present, was not served. The petitioner was declared proclaimed person vide order dated 19.12.2018, Annexure P-6 without meticulously following the mandatory provisions of Section 82 Cr.P.C.. His absence is neither wilful nor deliberate and on account of the reason aforesaid. He is ready and willing to join the proceedings and it is prayed that one opportunity may be granted to him to surrender before the learned trial Court, which may even be subject to costs. To buttress his submission, reliance is placed on the judgment of this Court in **Sonu vs. State of Haryana**, 2021(1) RCR (Criminal) 319, 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 09.09.2022 and CRM-M-36490-2022, titled as **Major Singh**

vs. State of Punjab, decided on 15.09.2022.

4. Learned State counsel opposes the same by submitting that the impugned order has been rightly passed by the trial Court as the petitioner had intentionally absented himself from the proceedings.

5. Heard.

6. The very purpose of initiation of proclamation proceedings, is to compel and secure the presence of the accused to face trial and establish the rule of law, as also to ensure finalization of the proceedings.

7. This Court in **Sonu** (supra), while summarizing the law on the procedure prescribed under Section 82 CrPC, to be followed for declaring a person as proclaimed offender/person, observed and held thus:

“9. The essential requirements of section 82 of the Cr.P.C., 1973 for issuance and publication of proclamation against an absconder and declaring him as proclaimed person/offender may be summarized as under:-

(i) Prior issuance of warrant of arrest by the Court is sine qua non for issuance and publication of the proclamation and the Court has to first issue warrant of arrest against the person concerned. (See **Rohit Kumar v. State of Delhi : 2008 CrL J. 2561**).

(ii) There must be a report before the Court that the person against whom warrant was issued had absconded or had been concealing himself so that the warrant of arrest could not be executed against him. However, the Court is not bound to take evidence in this regard before issuing a Proclamation under section 82 (1) of the Cr.P.C., 1973. (See **Rohit Kumar v. State of Delhi : 2008 CrL J. 2561**).

(iii) The Court cannot issue the Proclamation as a matter of course because the Police is asking for it. The Court must be prima facie satisfied that the person has absconded or is concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence. (See **Bishundayal Mahton and others v. Emperor : AIR 1943 Patna 366** and **Devender Singh Negi v. State of U.P. : 1994 CrL LJ (Allahabad HC) 1783**).

(iv) The requisite date and place for appearance must be specified in the proclamation requiring such person to appear on such date at the specified place. Such date must not be less than 30 clear days from the date of issuance and publication of the proclamation. (See ***Gurappa Gugal and others v. State of Mysore : 1969 CriLJ 826*** and ***Shokat Ali v. State of Haryana : 2020(2) RCR (CRIMINAL) 339***).

(V) Where the period between issuance and publication of the proclamation and the specified date of hearing is less than thirty days, the accused cannot be declared a proclaimed person/offender and the proclamation has to be issued and published again. (See ***Dilbagh Singh v. State of Punjab (P&H) : 2015 (8) RCR (CRIMINAL) 166*** and ***Ashok Kumar v. State of Haryana and another : 2013 (4) RCR (CRIMINAL) 550***)

(vi) The Proclamation has to be published in the manner laid down in section 82 (2) of the Cr.P.C., 1973. For publication the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house. The three sub-clauses (a)- (c) in section 82 (2)(i) of the Cr.P.C., 1973 are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. (See ***Pawan Kumar Gupta v. The State of W.B. : 1973 CriLJ 1368***). Where the Court so orders a copy of the proclamation has to be additionally published in a daily newspaper circulating in the place in which the accused ordinarily resides. Advisably, proclamation has to be issued with four copies so that one each of the three copies of the proclamation may be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides, to some conspicuous place of such town or village and to some conspicuous part of the Courthouse and report regarding publication may be made on the fourth copy of the proclamation. Additional copy will be required where the proclamation is also required to be published in the newspaper.

(vii) Statement of the serving officer has to be recorded by the Court as to the date and mode of publication of the proclamation. (See ***Birad Dan v. State : 1958 CriLJ***

965).

(viii) The Court issuing the proclamation has to make a statement in writing in its order that the proclamation was duly published on a specified day in a manner specified in section 82(2)(i) of the Cr.P.C., 1973. Such statement in writing by the Court is declared to be conclusive evidence that the requirements of Section 82 have been complied with and that the proclamation was published on such day. (See ***Birad Dan v. State : 1958 CriLJ 965***).

(xi) The conditions specified in section 82(2) of the Cr.P.C., 1973 for the publication of a Proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the Proclamation and proceedings subsequent thereto a nullity. (See ***Devendra Singh Negi alias Debu v. State of U.P. and another : 1994 CriLJ 1783*** and ***Pal Singh v. The State : 1955 CriLJ 318***).

8. Adverting to the facts of the present case, the reasons for non-appearance of the petitioner that led to the passing of the impugned order, appear to be justified. At times, the accused can be prevented by sufficient reasons to put an appearance before the Court and such an absence cannot necessarily be construed as deliberate and wilful. However, it is incumbent upon him to join the proceedings, before the trial Court, for the culmination of the same. Considering the facts and circumstances of the case in light of the judgments referred to above and readiness and willingness of the petitioner to surrender and join the proceedings, which would help in expediting the trial, the present petition deserves to be and is allowed in the interest of justice.

9. Accordingly, the impugned orders dated 27.03.2018, Annexure P-5 and 19.12.2018, Annexure P-6 are set aside subject to surrender by the petitioner before the trial Court on or before 29.09.2023 and depositing Rs.15,000/- to be disbursed to respondent No.1 forthwith. He is allowed to remain on the same bail/

surety bonds as had been furnished by him at the time for granting regular bail. He shall also furnish an undertaking by way of an affidavit that he will appear on each and every date of hearing before the trial Court, unless specifically exempted by the Court. He shall not leave the country without prior permission of the Court. The trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case.

10. The present petition is allowed in part. However, liberty is granted to raise all pleas that may be available as regards complaint is concerned, at the appropriate stage, in accordance with law.
11. 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.

September 19, 2023

M.Kamra

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned

:

Yes / No

Whether reportable

:

Yes / No