

261 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-1971-2023

DATE OF DECISION:-15.03.2023

Ravi Garg

...Petitioner.

VS.

State of Haryana and another

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vishal Garg, Advocate,
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

Mr. Mandeep Singh Kaler, Advocate,
for respondent No.2.

HARKESH MANUJA, J.

By way of present petition under Section 482 Cr.P.C., prayer has been made for setting aside of order dated 31.10.2022 passed by the court of learned JMIC, Panchkula, whereby the petitioner has been declared as proclaimed person.

On account of dishonour of cheque bearing No.887439 dated 05.07.2017, a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, "1881 Act") came to be filed against the petitioner, at the instance of respondent No.2. Having summoned therein, petitioner failed to appear before the trial court, thereby, resulting into passing of order dated 31.10.2022, declaring him as a proclaimed person under Section

82 of the Code of Criminal Procedure.

Learned counsel for the petitioner submits that in pursuance to the summoning order passed against the petitioner, the matter before the trial court was being listed for filing of correct address since 20.05.2022, however, without the correct address of the petitioner having been filed by respondent No.2-complainant, trial court, based on an affidavit filed by the complainant stating that the address of the petitioner as mentioned in the complaint was his last known address, on 31.10.2022 ordered for issuance of proclamation against the petitioner by invoking Section 82 Cr.P.C. by recording that the accused-petitioner was intentionally avoiding to appear before the court. Learned counsel further submits that in the absence of filing of fresh address of the petitioner, the proclamation under Section 82 Cr.P.C. could not have been issued against him on the same address, merely on the basis of an affidavit filed by respondent No.2-complainant in a mechanical manner. Besides it, learned counsel also submits that the petitioner was also ready to settle the dispute with respondent No.2-complainant and in order to show his bonafide, he even deposited a demand draft amounting to Rs.1,10,000/- in the name of respondent no.2-complainant, which was handed over to learned counsel representing her before this Court on 16.02.2023. In addition, he also points out that in pursuance to the orders dated 16.01.2023 and 08.02.2023, passed by this Court, the petitioner even appeared before the trial court on 15.02.2023 and furnished his bail bonds/surety bonds to the satisfaction thereof.

On the other hand, learned counsel for the respondents vehemently opposed the prayer made in the present petition by submitting

that the non-appearance of the petitioner before the trial court was wholly intentional as he was having complete knowledge about the pendency of the proceedings and thus the impugned order does not warrant interference. As regards the settlement, it has been submitted by learned counsel for respondent No.2 that the same was not possible as there were other cheques also, issued by the petitioner in favour of respondent No.2-complainant, which were dishonoured and separate proceedings pertaining to those were going on.

I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made on behalf of the petitioner.

From perusal of zimni orders passed by the trial court, which have been reproduced in the paper-book, it can be found out that vide order dated 20.05.2022, the trial court directed respondent No.2-complainant for filing of correct address of the petitioner, later, in the absence of filing of the same, merely on the basis of an affidavit having been filed by respondent No.2 to the effect that the address as mentioned in the complaint was the last known address of the petitioner, the proclamation under Section 82 Cr.P.C. was issued against the petitioner on the same very address, in the most mechanical manner without even verifying the factum thereof. Section 82 Cr.P.C. since regulates the liberty of an individual, thus has to be strictly construed and no individual can be proceeded against under the same in a casual manner. In the facts and circumstances of the present case, the amazing swiftness shown by the trial court while initiating proceedings under Section 82 Cr.P.C. on the address already mentioned and that too,

without any further verification was wholly uncalled for.

Besides it, the petitioner has already appeared before the trial court on 15.02.2023 in pursuance to orders dated 16.01.2023 and 08.02.2023 and has furnished his bail bonds/surety bonds.

Keeping in view the fact that the petitioner has already appeared before the trial court and joined the proceedings, order dated 31.10.2022 based on the proclamation ordered in the absence of correct address being by respondent No.2-complainant, declaration of petitioner as proclaimed person is thus, hereby quashed.

However, it is made clear that draft bearing No.005650 dated 15.02.2023 amounting to Rs.1,10,000/-, which was handed over by the petitioner to respondent No.2-complainant in Court on 16.02.2023 shall remain with her during pendency of proceedings before the trial court and can be encashed by her, however, the same shall be subject to the final outcome of the complaint.

Accordingly, petition stands disposed of, subject to payment of costs of Rs.10,000/- to be deposited by the petitioner with the Punjab and Haryana High Court Bar Association, within a period of three weeks from today.

15.03.2023

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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No