

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-2907 of 2020(O&M)

Date of Decision: 14.03.2023

Mukesh Kumar Arora & Ors.

...Petitioners

Versus

State of Haryana & Anr.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Ajay Kalra, Advocate
For the petitioners.

Mr. Ishnoor Singh, Advocate for
Mr. Vikram Singh, Advocate
For respondent No.2.

Mr. Naveen Sheoran, DAG Haryana.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioners under Sections 482/ 483 Cr.P.C. seeking quashing of order dated 29.11.2016 whereby the petitioners were declared proclaimed persons in complaint case No. 1037 of 2015 titled Vinod Kumar Vs. Viva D Mohit International, under Section 138 of Negotiable Instruments Act (for brevity, the Act) and order dated 08.01.2020 whereby the learned trial Court directed the concerned SHO to register FIR under Section 174-A IPC against the petitioners.

The brief facts of the case are that respondent No.2 Vinod Kumar Gupta filed criminal complaint under Section 138 of the Act against the petitioners wherein the summoning order was passed but as the petitioners failed to appear in the trial Court, proceedings under Section 82 Cr.P.C. were initiated and finally the petitioners were declared as proclaimed

persons vide order dated 29.11.2016 and thereafter the learned trial Court gave specific directions to the SHO concerned to register FIR under Section 174-A IPC against the petitioners.

Being aggrieved, the petitioners have filed the present petition.

On notice of motion, respondent No.2 put in appearance through his counsel.

The counsel for the petitioners submits that the impugned order dated 29.11.2016 is not passed by the learned trial Court in conformity with the provisions of Section 82 Cr.P.C. and consequently, the said order deserves to be set aside. Resultantly, the subsequent order dated 08.01.2020 passed by the learned trial Court being off-shoot of order dated 29.11.2016 is also liable to be set aside. The counsel for the petitioners further submits that now the petitioners have been granted regular bail in the complaint filed under Section 138 of the Act.

The present petition is contested by counsel for respondent No.2 who submits that the petitioners were evading their service and on this the learned trial Court initiated proceedings against the petitioners under Section 82 Cr.P.C. and after following the due procedure the petitioners were declared as proclaimed persons vide order dated 29.11.2016. It is further submitted that orders dated 29.11.2016 and 08.01.2020 passed by the learned trial Court are legal and valid and no ground is made out to interfere in the matter under Section 482 Cr.P.C. However, counsel for respondent No.2 has not disputed the fact that in the main criminal complaint filed under Section 138 of the Act, the petitioners have been granted concession of regular bail.

I have considered the submissions made by counsel for the parties.

Section 82 Cr.P.C. reads as follows:-

“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.”

All the provisions of Section 82 Cr.P.C. are to be read cumulatively as they are mandatory in nature and non compliance of even one clause would vitiate the entire proceedings initiated under Section 82

In the instant case, as per the report of the serving police official, one copy of proclamation was affixed at common place and one copy was appended on the notice board of the Court while the third copy was submitted with the concerned report regarding execution of proclamation. However, from the perusal of the said report it appears that the proclamation was not read publicly in some conspicuous place of town or village in which the accused ordinarily resided. In this manner, mandatory requirement of Section 82 (2) (i)(a) Cr.P.C. has not been complied with, thus, vitiating the entire proceedings under Section 82 Cr.P.C. including the impugned order dated 29.11.2016 whereby the petitioners were declared as proclaimed persons.

In the light of the above, impugned order dated 29.11.2016 whereby the petitioners were declared as proclaimed persons is not in consonance with the mandatory provisions of Section 82 Cr.P.C. and resultantly subsequent order dated 08.01.2020 is also invalid.

Consequently, the present petition is allowed and impugned orders dated 29.11.2016 and 08.01.2020 are hereby quashed along with all the subsequent proceedings arising therefrom, qua the petitioners.

14.03.2023
Jiten

(KARAMJIT SINGH)
JUDGE

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