

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

(Sr. No. 107+223)

**CRM-11131-2023 in/and
CRM-M-4637-2023**

Date of decision : 10.03.2023

Kanhaiya Lal

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present : Mr. Sunil K. Tandon, Advocate for the petitioner.
Mr. Rajiv Sidhu, DAG, Haryana.
Mr. J. S. Saini, Advocate for respondent No.2.

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DEEPAK SIBAL, J. (Oral)

Respondent No.2 (hereinafter referred to as the complainant) filed a complaint under Section 138 and 142 of the Negotiable Instruments Act, 1881 (for short - the Act) as per which the petitioner had borrowed from the complainant an amount of Rs.12.50 lakhs but after having returned Rs.1.50 lakhs, issued a cheque for the remaining Rs.11 lakhs which on presentation was dishonoured. Thereafter, the complainant had got served upon the petitioner a legal notice to give him an opportunity to make good the payment which was due towards him but to no avail. In the trial that ensued the petitioner was convicted and sentenced by the trial court to undergo rigorous imprisonment for a period of 02 years with a further direction to pay to the complainant Rs.11 lakhs as compensation and in default of payment of compensation to further undergo simple

imprisonment for 06 months. The petitioner appealed against the afore conviction during the pendency whereof he was declared a proclaimed person resulting in the registration of FIR No.492 dated 31.10.2020 under Section 174-A IPC against him.

It is in the afore circumstances that the petitioner has filed the instant petition under Section 482 Cr.P.C. through which he asserts that the order declaring him to be a proclaimed person was illegal as prior thereto he was never served any notice as at that time, when he is said to have been served the notice before declaring him to be a proclaimed person, he was in Canada and that he intends to compromise the matter with the complainant.

To test the *bona fides* of the petitioner the petitioner was directed to deposit the cheque amount *i.e.* Rs.11 lakhs before the Registrar General of this Court with a further direction that in case such deposit was made, on his return to India, the petitioner shall not be arrested.

The petitioner deposited Rs.11 lakhs before this Court and thereafter the matter was referred to the Mediation and Conciliation Centre of this Court where the parties settled their dispute as per which in addition to the cheque amount of Rs.11 lakhs, the petitioner agreed to pay to the complainant Rs.5.50 lakhs as compensation.

In pursuance to the afore compromise arrived at between the petitioner and the complainant Rs.11 lakhs lying deposited with the Registrar General of this Court is ordered to be released to respondent No.2 in the form of a bank draft.

Learned counsel for respondent No.2 also acknowledges

receipt of Rs.5.50 lakhs from the petitioner as compensation.

In the light of the afore peculiar facts and in particular that since at the time when the petitioner is said to have been served before declaring him to be a proclaimed person he was in Canada and therefore before his proclamation he was not served in terms of the procedure prescribed under Section 82 Cr.P.C., not only the impugned order dated 18.02.2019 (Annexure P-2) through which the petitioner was declared a proclaimed person but also the resultant FIR being FIR No.492 dated 31.10.2020 under Section 174-A IPC are ordered to be quashed. Further, in terms of the law laid down by the Supreme Court in ***Damodar S. Prabhu Vs. Sayed Babalal H. (2010) 5 SCC 663*** the petitioner's conviction under Section 138 of the Act is also set aside. However, the same shall be subject to the petitioner's depositing 15% of the cheque amount with the District Legal Services Authority, Kurukshetra.

The petition is allowed in the above terms.

Put up on 18.04.2023 to enable learned counsel for the petitioner to furnish proof of payment of 15% of the cheque amount as costs.

10.03.2023
sunil yadav

(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No