

CRM-M-6349 of 2023

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

CRM-M-6349 of 2023
Date of decision:08.02.2023

Rakesh Kumar

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Ms. Rupinder K. Thind, Advocate,
for the petitioner.

NAMIT KUMAR, J. (ORAL)

Petitioner has approached this Court by way of filing the instant petition under Section 482 Cr.P.C. for quashing of order dated 19.10.2022 (Annexure P-9) passed by learned Judicial Magistrate Ist Class, Gurdaspur, whereby petitioner has been declared as proclaimed offender in the proceedings arising from complaint No.NACT/436/2020 dated 18.09.2020 titled 'Manjit Singh v. Rakesh Kumar' under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act'), filed by respondent No.2. Further prayer has been made to grant anticipatory bail to the petitioner or in the alternative to grant an opportunity to him to appear before the Court and admit on regular bail.

Brief facts of the case are that petitioner borrowed an amount of Rs.2,50,000/- from respondent No.2-complainant in the

CRM-M-6349 of 2023

month of September, 2018 for investment in his furniture business and promised to return the amount on or before 12.08.2020. In order to discharge his liability, petitioner gave a cheque bearing No.217626 of Corporation Bank to respondent No.2-complainant. On presentation of the said cheque by respondent No.2 with his banker i.e. Axis Bank, Dhariwal, the same was returned to him vide return memo dated 14.08.2020 with the remarks “funds insufficient”. Thus, respondent No.2-complainant through his counsel sent legal notice to the petitioner on 25.08.2020 and requested the petitioner to make the payment of cheque amount within stipulated time. Legal notice was received by the petitioner-accused, however, he did not repay the amount. Hence, respondent No.2-complainant filed a complaint under Section 138 of the NI Act on 18.09.2020. The trial Court summoned the petitioner for 01.03.2021 vide order dated 01.02.2021 (Annexure P-2). Petitioner surrendered before the trial Court and he was granted bail vide order dated 12.10.2021. Thereafter, despite issuance of summons, his undertaking, bailable and non-bailable warrants, petitioner did not appear before the Court on various dates i.e. 21.10.2021, 26.11.2021, 09.03.2022, 19.05.2022 and 06.08.2022 despite the fact that petitioner was directed to appear before the trial Court through said process of service and finally he was declared proclaimed offender vide impugned order dated 19.10.2022. Hence, this petition.

Learned counsel for the petitioner submits that the petitioner could not appear before the trial Court on 21.10.2021 as his counsel did not explain proper procedure for appearance before the

CRM-M-6349 of 2023

Court and the petitioner was not having any knowledge that his personal presence was mandatory on each and every date of the case. It has further been argued that the petitioner was pursuing his LL.B. course on regular basis at Batala and most of the time he remained busy in attending classes and he used to go to library for preparation and since he was preparing for his examination for Semester-II, he could not appear before the Court.

I have heard learned counsel for the petitioner and perused the record.

A perusal of the record shows that in a complaint filed by respondent No.2-complainant-Manjit Singh under Section 138 of the NI Act, petitioner was summoned by the Court of learned Judicial Magistrate Ist Class, Gurdaspur, vide order dated 01.02.2021 (Annexure P-2) for 01.03.2021. Since the summons were not served upon the petitioner, respondent No.2-complainant was directed to furnish correct address of the petitioner-accused and fresh summons were ordered to be issued for 05.05.2021 vide order dated 01.03.2021. On 05.05.2021 and 02.08.2021 the position was same. Then the notice issued to the petitioner for 10.09.2021 was received back unserved with the report that he has gone to Delhi on account of death of his relative and the Court came to the conclusion that petitioner is having the knowledge of the case and he is intentionally and deliberately evading the service of summons and consequently he was summoned throughailable warrants for 12.10.2021 vide order dated 10.09.2021. Petitioner appeared on 12.10.2021 and was enlarged on bail and the

CRM-M-6349 of 2023

case was adjourned for 21.10.2021 for furnishing bail bonds/surety bonds. On the next date of hearing i.e. 21.10.2021, petitioner did not appear and again notice was issued to him for 26.11.2021. However, he did not appear on 26.11.2021 and he was again summoned through bailable warrants in the sum of Rs.5,000/- with one surety in the like amount for 11.01.2022 with the observation that petitioner was intentionally and deliberately avoiding the service of summons on 09.03.2022. Notice was served upon the petitioner and on 10.01.2022 brother of the petitioner, namely, Tarsem Lal undertook to produce him before the Court on 11.01.2022. The said undertaking reads as under: -

“I Tarsem Lal s/o Rattan Lal r/o Ward No.5, Gali Master Sikandar Lal, Ludhiana Mohalla Dhariwal has told me that I Rakesh Kumar s/o Rattan Lal would be presented in your Court on 11/01/2022 and would be responsible for submission of Rs.5000 according to the order.

***Attested
Head ASI
Police Station Dhariwal
10/01/2022***

Tarsem Lal”

Despite completion of service, petitioner did not appear on 09.03.2022 and he again evaded the service of the bailable warrants and again fresh bailable warrants were issued on 09.03.2022 for 19.05.2022. Again bailable warrants were received back unexecuted and he was summoned through non-bailable warrants for 06.08.2022 vide order dated 19.05.2022. Report dated 05.08.2022 of the concerned ASI, Police Station Dhariwal, who went to effect service of non-bailable warrants, is as under: -

CRM-M-6349 of 2023

“Sir,

That regarding the above said warrant his address has been raided. But above said accused Rakesh Kumar s/o Rattan Lal r/o Indian Furniture House Mulatanwal near Baba Banda Singh Bhadur Academy GT Road Malanwal Tehsil and District Gurdaspur was not present there. But his brother was present there who was informed about the warrant, summon date.

***Harbhajan ASI
Police Station Dhariwal
05/08/2022”***

Since the non-bailable warrants were received back unexecuted as he was not present at home, however, intimation was given to his brother, the trial Court came to the conclusion that presence of the petitioner-accused cannot be procured in ordinary way and consequently, proclamation proceedings were initiated against him vide order 06.08.2022 for 19.10.2022 and the said order reads as under: -

“Non-bailable warrants issued against accused Rakesh Kumar received back unexecuted with a report of not present at home and intimation was given to his brother. Report perused. It appears that accused is intentionally and deliberately avoiding his service. This court is satisfied that the presence of accused cannot be procured in an ordinary way, as such accused is ordered to be served through coercive method i.e. proclamation. Accordingly, proclamation proceedings are initiated against the accused for 19.10.2022.

The process serving constable shall return the process/proclamation and shall come present to suffer statement regarding its due execution on 07.09.2022.

Date of Order 06.08.2022

***Amandeep Singh, PCS
JMIC/Gurdaspur
UID No.PB0587”***

CRM-M-6349 of 2023

Thereafter, vide order dated 19.10.2022, petitioner was declared proclaimed offender in view of the provisions of Section 82 Cr.P.C. and the case was adjourned for 12.01.2023 for filing list of property of the petitioner-accused so that his property could be attached. Thereafter, on 12.01.2023 the case was adjourned for 10.04.2023 for filing of list of property of the petitioner-accused.

From the perusal of the facts mentioned above, it is clear that petitioner has thoroughly misused the process of law and intentionally and deliberately evaded the service of summons, bailable and non-bailable warrants and, therefore, he has rightly been declared as proclaimed offender vide order dated 19.10.2022. The petitioner had moved an application for grant of anticipatory bail but the same was rejected by the Court of learned Sessions Judge, Gurdaspur vide order dated 17.11.2022 (Annexure P-10).

The contention of the learned counsel for the petitioner that the petitioner was not aware about the procedure of the Court cannot be accepted as the petitioner is a student of law and is pursuing LL.B. course.

At this juncture, the comparative analysis of the facts of this case reveals that the petitioner voluntarily disengaged himself with the trial proceedings and has made a mockery of law. This Court is cognizant of the scope of Section 482 Cr.P.C. and in numerous judicial pronouncements, it has been held by various High Courts as well as the Hon'ble Supreme Court that the inherent powers are to be used sparingly and with circumspection and cannot be exercised in a routine

CRM-M-6349 of 2023

manner, much less for the convenience of the accused. For the sake of arguments, even if it is assumed that in a given case such a permission needs to be given to the accused, in that eventuality also the conduct of the accused-petitioner would acquire importance, and this Court is of the opinion that a proclaimed offender who failed to associate with the trial proceedings despite knowledge is not entitled to invoke the inherent powers of this Court to seek quashing of criminal proceedings.

This Court in *Mehnga Singh v. State of Punjab 2002 (1) CLJ (Criminal) 302* observed that when an accused has been declared as a proclaimed offender, petition against the order under Section 482 Cr.P.C., 1973 is not maintainable, the accused should first move the Court who had declared him a proclaimed offender and even an objection against validity of proclamation is required to be raised in the first instance before the Court which issued the proclamation and power under Section 482 Cr.P.C., 1973 is not to be exercised in favour of a person who is absconding or avoiding service. In that way, the petition is not maintainable.

Furthermore, in *State of Madhya Pradesh v. Pradeep Sharma 2014(1) RCR (Criminal) 269* the Hon'ble Supreme Court of India has observed that when an accused is absconding and has been declared as a proclaimed offender, then such accused should not be granted anticipatory bail.

Therefore, keeping in view the peculiar facts and circumstances of the case, conduct of the petitioner and settled

CRM-M-6349 of 2023

proposition of law, this Court is not inclined to invoke its jurisdiction under Section 482 Cr.P.C.

Hence, the present petition is sans merits and is dismissed accordingly.

08.02.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No