

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CRM-M-5784-2023 (O&M)

Date of Decision: 02.06.2023

Daljit Singh

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Yash Anand, Advocate for the petitioner.

Mr. Ramender Singh Chauhan, AAG, Haryana.

ASHOK KUMAR VERMA, J. (ORAL)

1. Through this petition under Section 482 Cr.P.C. prayer has been made for quashing Complaint Case No. 151 dated 16.02.2016 (Annexure P-1) titled as 'Azad Kumar Vs. Sh. R.P. Singh and another'; summoning order dated 17.08.2010 (Annexure P-5) and order dated 28.11.2016 (Annexure P-7) passed by learned Judicial Magistrate Ist Class, Bhiwani, declaring the petitioner as proclaimed person under Section 82 Cr.P.C.

2. Respondent No. 2-Azad Kumar, filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short-'the Act') against the petitioner and his co-accused, namely, R.P. Singh as they have failed to discharge their liability and the cheques issued by them were dishonoured on account of "Insufficient Funds". After hearing the complainant, the trial Court vide summoning order dated 17.08.2010 (Annexure P-5) summoned the petitioner along with his co-accused to

face trial under Section 138 of the Act. The petitioner failed to appear before the trial Court and thus, was declared as proclaimed person vide order dated 28.11.2016 (Annexure P-7). Hence, the present petition.

3. Learned counsel, *inter alia*, contends that petitioner has falsely been implicated in the present case. The petitioner was not the Director of the company. The cheques in question were given to the complainant as security cheques which were supposed to return after the payment received on 16.10.2009, but the same were misused by the complainant. He further contends that the complaint filed by the complainant is not maintainable as the same has been filed against the Directors of the company and the company was not arrayed as a party which is imperative as per the provisions of Section 141 of the Act.

4. On the other hand learned counsel for the State has vehemently opposed the submission made by learned counsel for the petitioner.

5. I have heard learned counsel for the parties and carefully gone through the record.

6. Perusal of file shows that petitioner is deliberately evading Court proceedings. Therefore, after following due procedure prescribed under the law, he has been declared proclaimed person by the trial Court vide order dated 28.11.2016 (Annexure P-7). Moreover, impugned order was passed way back on 28.11.2016 and the petitioner has challenged the same through present petition after a period of more than 06 years. No sufficient reason has been given by the petitioner for his non-appearance before the Trial Court. Furthermore, this tendency to

approach the High Court directly without going to the trial Court first is not proper. Petitioner cannot be allowed to bye-pass the trial Court.

7. In *Mehnga Singh v. State of Punjab, 2002(2) R.C.R.(Criminal) 501*, this Court has observed that when an accused has been declared as proclaimed offender, a petition against the order under Section 482 Cr.P.C. is not maintainable and that the accused should first move the Court which declared him 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 that power under Section 482 Cr.P.C. is not to be exercised in favour of a person, who is absconding or avoiding service.

8. In view of the above, the instant petition being completely devoid of any merit, stands dismissed.

9. Since, the main petition stands disposed of, therefore, all the criminal miscellaneous applications pending, if any, shall also stand disposed of.

June 02, 2023	(ASHOK KUMAR VERMA)
<i>rishu</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No