

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

(116)

CRM-M-7186-2023

Date of Decision: 10.02.2023

Amritpal Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Mandeep Singh Sachdev, Advocate, for the petitioner.

Mr. Ravinder Singh, AAG., Punjab.

HARKESH MANUJA, J.(ORAL)

By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of FIR No.42 dated 08.03.2023 under Section 174-A of IPC registered at P. S. Division No.5, Jalandhar as well as other subsequent proceedings arising therefrom.

On account of dishonor of cheque bearing No.025353 dated 07.07.2015 a complaint under Section 138 of the Negotiable Instruments Act, 1881 (herein after referred to as "the Act") came to be filed against the petitioner followed by passing of summoning order dated 21.10.2015. Having failed to appear before the trial Court, the petitioner was declared as proclaimed person vide order dated 09.06.2016.

The factum of passing of summoning order having brought to the notice of the petitioner, he appeared before the trial Court and was granted concession of regular bail vide order 30.03.2018. Though, by that time, FIR No.42 dated 08.03.2018 was registered against him under Section 174-A IPC.

The petitioner was granted concession of anticipatory bail in the

Referring to the order passed by the trial Court preceding the declaration of petitioner as proclaimed offender, learned counsel for the petitioner submits that the petitioner was never served either through registered notice or even through theailable or non-ailable warrants. He further submits that no sincere efforts were made in this regard before proceeding against him under Section 82 Cr.P.C and thus, the declaration made under Section 82 (1) Cr.P.C. was wholly uncalled for. In view thereof, coupled with the fact that petitioner having appeared before the trial Court in the proceedings under Section 138 of the Act, learned counsel prays for quashing of the FIR.

On the other hand, learned State counsel vehemently opposes the prayer made in the petition while submitting that petitioner was declared proclaimed person by following the mandatory procedure under Section 82 (1) Cr.P.C. and mere appearance made by the petitioner before the trial Court will not absolve him of the offence committed under Section 174-A IPC.

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.

For the purpose of decision of the present petitioner, a brief reference of some of the *zimni* orders passed by the trial Court in the proceedings arising out of the complaint filed under Section 138 of the Act would be relevant and thus, are reproduced hereunder:

“Present : Complainant with counsel Sh. D. S. Dhillon, Advocate

Notice issued to the accused through RC not received back. This Court is satisfied that he cannot be served through ordinary manner. Now he be summoned through BWs for 14.03.2016.

*Sd/-
(Navjit Pal Kaur)
JMIC, Jalandhar,
28.01.2016*

Present : None for Complainant

BWs issued to the accused received back unserved with the report of not met. This court is satisfied that the accused cannot be served through ordinary summons. Let NBWs against the accused be issued for 04.05.2016.

*Sd/-
(Navjit Pal Kaur)
JMIC, Jalandhar,
14.03.2016*

Present : None for Complainant

NBWs issued to the accused received back unserved with the report of not met. This Court is satisfied that the accused cannot be served through ordinary summons. Now accused be summoned through proclamation under Section 82 for 09.06.2016.

*Sd/-
(Navjit Pal Kaur)
JMIC, Jalandhar,
04.05.2016”*

From a perusal of the zimni orders reproduced hereinabove, one can easily trace out that no sincere effort was ever made by the trial Court for effecting service upon the petitioner in the proceedings under Section 138 of the Act, either through normal summoning or even through the other coercive method like bailable or non-bailable warrants. Rather than recording satisfaction to the effect that the petitioner was avoiding the service in pursuance to the summoning order dated 21.10.2015, by absconding or by concealing himself, the Court simplicitor recorded that the petitioner could

not be served either through ordinary summons or through bailable or non-bailable warrants which in fact was wholly uncalled for and could not have been made basis for issuance of proclamation under Section 82 Cr.P.C. As per Sub-Section 1 to Section 82 Cr.P.C., the Court could have issued proclamation for the purpose of effecting service upon the petitioner only once it had reason to believe that the petitioner against whom the warrants were issued was absconding or concealing himself so that the warrants could not be executed. Sub-Section 1 to Section 82 Cr.P.C. is reproduced hereunder:-

“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.”

In the absence of any such findings having been recorded by the trial Court, the issuance of proclamation for the purpose of effecting service upon the petitioner as ordered on 04.05.2016 was wholly without jurisdiction and beyond the scope of Section 82 Cr.P.C. which in fact is a safeguard provided so as to protect the liberty of an individual, being stemming from Article 21 of the Constitution of India and thus, has to be strictly construed as mandatory and inviolable

In view of the discussion made hereinabove, the order dated 09.06.2016 passed by the learned JMIC, Jalandhar, declaring the petitioner to be a proclaimed person is hereby set aside having not been passed in compliance of Section 82(1) Cr.P.C. followed by quashing of FIR No.42 dated

Jalandhar, as a consequence thereof.

The aforesaid order shall however, be subject to payment costs of Rs.10,000/- to be deposited with the Punjab and Haryana High Court Association Lawyer’s Family Welfare Fund having Account No.41564846387 with State Bank of India, High Curt Branch, Chandigarh, within a period of two weeks from today.

(HARKESH MANUJA)
JUDGE

10.02.2023
anil

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