IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-20051 of 2015 (O&M)
Date of Decision: April 25, 2023

M/s Rajbhra Medicare Pvt. Ltd. and others …Petitioners

Versus

Yogesh Kaushik …Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Ashok Gupta, Advocate for the petitioners.
Ms. Sharmila Sharma, Advocate for the respondent.

*****

DEEPAK GUPTA, J.

CRM No.13282 of 2023

This is an application for placing on record zimni orders Annexures A.1 passed by the trial Court, in compliance of the order dated 01.02.2023.

Application is allowed. Annexure A.1 is taken on record.

CRM-M-20051 of 2015

Prayer in this petition is to quash complaint No.861 dated 01.07.2013 (Annexure P.2) filed under Section 138 of the Negotiable Instruments Act, 1881; and order dated 31.03.2014 (Annexure P.4) passed by learned Judicial Magistrate Ist Class, Gurgaon, whereby petitioners were declared proclaimed persons and directions were given to initiate proceedings under Section 174A IPC.

2. It is revealed that complaint No.861 dated 01.07.2013 (CIS No.4535/2015) titled "Yogesh Kaushik Vs. M/s Rajbhra Medicare Pvt. Ltd. and others" was filed by the respondent- complainant before learned Judicial Magistrate Ist Class, Gurugram, to prosecute the five accused including the petitioners, under Section 138 of the Negotiable

RENU
2023.04.29 17:24
I attest to the accuracy and
authenticity of this document
Chandigarh

Instruments Act. After recording preliminary evidence, summoning order was passed on 24.09.2013. As presence of the accused could not be secured through summons sent through registered post and then warrants, proclamation under Section 82 Cr.P.C was issued, which was also published in newspaper and ultimately, petitioners were declared proclaimed persons vide order dated 31.03.2014 and direction was given to the concerned Police Station to initiate proceedings under Section 174A IPC.

3. It is contended by the petitioners that they were never served in any manner. When they were informed about the filing of the complaint by the respondent-complainant, they (petitioners) requested their counsel at Delhi to look into the matter, if any, going on in the Gurgaon Court. After obtaining certified copies of the orders, Shri P.K. Sharma, Advocate, through Shri Bakul Jain, Advocate moved an application before the trial Court to exempt the appearance of the petitioners, since petitioner No.2 being aged and sick person was suffering from the medical problem, whereas petitioner No.3 was out of country for business purpose. However, the application was rejected and the petitioners were declared proclaimed persons.

4. Vide order dated 18.06.2015 passed by this Court, notice of motion was issued and petitioners were directed, in the meantime, to surrender before the concerned trial Court within seven days and that on their appearance, they shall be admitted to regular bail. It is not disputed that in compliance of this order, petitioners have since surrendered before the trial Court and have been allowed regular bail.

5. Now the question is that whether the impugned order dated

RENU
2023.04.29 17:24
I attest to the accuracy and
authenticity of this document
Chandigarh

31.03.2014 deserves to be quashed.

6. Learned counsel for the petitioners has drawn attention towards the various zimni orders (Annexure A-1) passed by the trial Court prior to declaring them as proclaimed persons. It is revealed that after passing the summoning order on 24.09.2013, summons were sent through registered post and on the basis of postal receipt produced in the Court, service was presumed as per order dated 19.11.2013 and bailable warrants were directed to be issued. As per order dated 20.01.2014, bailable warrants were received with the report that accused were not available in the office and so, warrants of arrest were directed to be issued. The same were received back unexecuted on the next date of hearing i.e. 15.02.2014 and proclamation under Section 82 Cr.P.C was directed to be issued for 31.03.2014 with further direction to publish the same in a notified national newspaper.

7. On 31.03.2014, the following order was passed by the Court:-

> *"Today case was fixed for presence of accused. Application seeking exemption from personal appearance of accused Nos.2 and 3 have been moved by Sh. Bakul Jain, Advocate. It is mentioned in the application that accused no.2 is old person and suffering from medical problem. It is mentioned on behalf of accused no.3 that said accused is out of country for some business purposes. Hence, it is prayed that accused may not be declared as proclaimed offender today. Heard. The grounds mentioned in both the applications are not supported by any evidence/ document. Hence, the said applications are dismissed.*

RENU
2023.04.29 17:24
I attest to the accuracy and
authenticity of this document
Chandigarh

Perusal of the file shows that proclamation has been duly published as ordered. Period of 30 days from the date of publication have expired. Copy of news paper containing the said publication is available on record. Case has been called several times but no one has come present on behalf of the accused. It is already 3:30 PM. It is futile to wait for presence of the accused. So this Court is satisfied that accused has absconded, therefore, accused is declared proclaimed person. Necessary intimation in this regard be sent to concerned Police Station to initiate proceedings against the accused U/s 174-A IPC.

Counsel for the complainant has stated that preliminary evidence given at the time of filing of the complaint be read in his evidence U/s 299 of Cr.P.C and he would undertake further exercise of evidence only when the accused be arrested and be produced before the Court. A red ink note be given on the file that it will not be destroyed as it will be taken up as and when accused be arrested and produced before the court. File be consigned to the record room after due compliance."

8. It is, thus, apparent from the above-said order that despite the fact that petitioners had put in appearance through their counsel, though an application for exemption of appearance was moved on behalf of the petitioners through their counsel Shri Bakul Jain, Advocate, clearly stating therein that petitioner No.2 was sick and suffering from medical problem, whereas petitioner No.3 was out of country for business purpose, still the petitioners were declared proclaimed persons. Counsel for the petitioners has drawn attention towards Annexure P.3, copy of passport of respondent No.3 along with visa revealing that on

RENU
2023.04.29 17:24
I attest to the accuracy and
authenticity of this document
Chandigarh

31.03.2014, when the petitioner was declared proclaimed person, he was not in the country.

9. Apart from above, once appearance on behalf of the petitioners had been made through their counsel, pursuant to the proclamation issued for their appearance, though prayer for exemption was sought, it was not justified on the part of the trial Court to declare them proclaimed persons. It has already been noticed that petitioners have already surrendered before the trial Court and have been allowed regular bail and they are now participating in the proceedings.

10. Besides, learned counsel for the respondent- complainant submitted that respondent has no objection to allow this petition to the extent of quashing the impugned order, provided the petitioners face trial before the trial Court without seeking unnecessary adjournments.

11. Having regard to all the facts and circumstances of the case as noticed above, the impugned order dated 31.03.2014, whereby the petitioners were declared proclaimed persons and direction was given to initiate the proceedings under Section 174A IPC, is hereby set aside. However, it is directed that petitioners shall continue to join the proceedings before the trial Court and will not make any attempt to delay the same, as complaint has already become quite old.

Disposed of.

April 25, 2023 **(DEEPAK GUPTA)**
renu **JUDGE**

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

RENU
2023.04.29 17:24
I attest to the accuracy and
authenticity of this document
Chandigarh