

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

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CRM-M-13985-2023

Date of decision: 22.08.2023

Narinder Singh

...Petitioner

Versus

Gurdeep Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ashok Bhardwaj, Advocate, for the petitioner.

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 04.09.2019, Annexure P-4, passed by the Judicial Magistrate Ist Class, SAS Nagar, Mohali vide which the petitioner has been declared as proclaimed person in complaint case No.NACT/715/2018 dated 14.09.2018, under Section 138 of NI Act, 1881.

2. Learned counsel contends that the petitioner was declared proclaimed person by the trial Court vide order dated 04.09.2019, Annexure P-4 on account of his absence, the explanation for which is that the petitioner is resident of Dera Bassi the address i.e. reflected from the memo of parties in the present case as also the electricity bill, Annexure P-2. However, the address mentioned in the complaint was of village Azizpur where he did not presently reside, though this was mentioned in his Aadhar Card, since he previously resided there. Thus, he never received the summons of the complaint. He further submits that the disputed amount is Rs.1,03,000/-, which he is ready to pay the same to the complainant, a draft of which, dated 13.03.2023 has also been appended to the petition as

Annexure P-5. The absence of the petitioner is neither wilful nor deliberate and on account of the reason aforesaid. Further that he is ready and willing to join the proceedings and restricts his prayer in the present petition only regards to grant of one opportunity to him to surrender before the learned trial Court even if the same is subject to costs. Reliance is placed on the orders of this Court in CRM-M-38277-2022 dated 26.08.2022, in the case of **Surjit Singh vs. State of Punjab**, CRM-M-39000-2022, titled as **Raghav vs. State of Punjab**, decided on 09.09.2022 and CRM-M-36490-2022, titled as **Major Singh vs. State of Punjab**, decided on 15.9.2022.

3. No order prejudicial to the rights of the private respondent is being proposed to be passed by this Court, thus, there is no requirement of effecting service upon him.

4. Heard.

5. The very purpose of initiation of proclamation proceedings, is to compel and secure the presence of the accused to face trial and establish the rule of law, as also to ensure finalization of the proceedings.

6. Adverting to the facts of the present case, the reasons for non-appearance of the petitioner that led to the passing of the impugned order, appear to be justified. At times, the accused can be prevented by sufficient reasons to put an appearance before the Court and such an absence cannot necessarily be construed as deliberate and wilful. However, it is incumbent upon him to join the proceedings, before the trial Court, for the culmination of the same. Considering the fact that the absence of the petitioner was not wilful or deliberate and his readiness and willingness to surrender and join the proceedings, in case one opportunity is granted to the petitioner, no prejudice shall be caused to any of the

parties, rather his joining the proceedings would help in expediting the trial. Moreso, he is ready to even pay the amount involved in the case to the complainant, a copy of draft is also appended as Annexure P-5. Thus, in order to make the ends of justice met and finding judgments referred to above being applicable to the instant case, the present petition deserves to be allowed.

7. In view of the afore-referred orders and the facts and circumstances of the case, the impugned order dated 04.09.2019, Annexure P-4 is set aside subject to surrender by the petitioner before the trial Court on or before 10.09.2023 and depositing an amount of Rs.10000/- as costs, with the Poor Patients Welfare Fund, PGIMER, Chandigarh. On furnishing bail/surety bonds, the trial Court shall release him on bail subject to its satisfaction. He is also directed to furnish an undertaking by way of an affidavit that he will appear on each and every date of hearing before the trial Court, unless specifically exempted by the Court. He shall not leave the country without prior permission of the Court. The trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case.

8. The present petition is allowed in part.

9. Before parting with this order, it is made abundantly clear that in case the petitioner does not adhere to the aforesaid, the present petition shall be deemed to have been dismissed without any reference to this Court.

(AMAN CHAUDHARY)
JUDGE

22.08.2023
Ankur

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