

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-13628-2023 (O&M)
Reserved on: 10.10.2023
Pronounced on: 13.10.2023

Gopal Ramubhai Jaiswal

. . . . Petitioner

Vs.

State of Haryana and others

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Surinder Kumar Daaria, Advocate, for the petitioner.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioner prays for quashing of impugned order dated 28.02.2020 (Annexure P6) passed by Id. JMIC, Gurugram, whereby petitioner was declared proclaimed person and consequent thereto, FIR No.840 dated 16.03.2020 was registered against him under Section 174 A of the IPC at Police Station Shivaji Nagar, District Gurugram.

2. On perusal of the paper-book, it emerges that a criminal complaint (Annexure P4) titled 'Indiabulls Housing Finance Ltd. Vs. Gopal Ramubhai Jaiswal' [CIS N: 18765-2017], was filed by respondents No. 2 & 3 against the petitioner to prosecute him under Section 138 of the Negotiable Instruments Act, 1881 [for short 'the NI Act'] for dishonour of a cheque dated 14.09.2017 for an amount of ₹22,991. Summoning order was passed after taking preliminary evidence. Summons, followed by warrants and then proclamation was issued against the petitioner, but as he failed to respond, petitioner was declared proclaimed person vide impugned order

dated 28.02.2020 (Annexure P6) and consequent to the direction of the Court, FIR No.840 dated 16.03.2020 was registered.

3. (i) Challenging the aforesaid order, it is contended by ld. counsel that petitioner had availed two loans from respondents No.2 and 3, both of which had been cleared up to 2021 and even the 'No Due Certificate' had been issued. Petitioner was shocked, when some police official visited his house on 16.05.2022 and informed about the pendency of the complaint. On downloading the information, he came to know about filing of the complaint regarding dishonour of cheque of ₹22,991/- dated 10.10.2017 and the fact that he had been declared proclaimed person.

(ii) Ld. counsel contends that it was the fault of the respondents-complainants not to withdraw the complaint, despite clearance of the loans. When petitioner approached respondents No.2 & 3 through their Mumbai Office and explained the entire facts, then the complaint was dismissed as withdrawn by posting it before the Daily Lok Adalat on 10.08.2022. Copy of the order dated 10.08.2022 of the Daily Lok Adalat is Annexure P8.

(iii) Ld. counsel contends that petitioner was never served. So much so, despite the fact that petitioner is a resident of Mumbai, complaint was filed in Gurugram and summoning order was passed by ld. JMIC, Gurugram without following the procedure under Section 202 CrPC.

4. Heard.

5. Perusal of the paper-book reveals that summons were issued against the petitioner, after recording preliminary evidence, without following the procedure contemplated under Section 202 CrPC, which is mandatory in nature, considering the fact that petitioner is a resident of

Mumbai i.e., outside the jurisdiction of Id. JMIC, Gurugram. It is revealed further that service of the petitioner was presumed on the basis of non-receipt of the postal envelope and then bailable warrants were issued against him. Ultimately, proclamation was issued. Id. counsel has also placed on record the copy of proclamation revealing that it was sent at the Mumbai address. However, copy of the statement Annexure P-25 of EHC Krishan Kumar, who published the proclamation, would reveal that though he pasted it in the locality of the petitioner, but it was found that petitioner was not living at the given address as he had left the same long back. Besides, it is further revealed from the said statement that no effort was made to publically read the proclamation at some conspicuous place of the town where the petitioner usually resides, which is one of the mandatory requirements of Section 82 CrPC. It is further revealed that no effort was made by the complainant-respondent to provide the correct address of the petitioner to the Court.

6. Thus, it is evident that there is a clear violation of not only Section 202 CrPC but also Section 82 CrPC and therefore, impugned order dated 28.02.2020 and the consequent FIR No.840 dated 16.03.2020 registered at Police Station Shivaji Nagar, District Gurugram under Section 174 A of the IPC and all consequential proceedings arising therefrom are hereby quashed.

Disposed of.

13.10.2023

Vivek

(DEEPAK GUPTA)
JUDGE

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No