

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

CRM-M-21421 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.12949 of 2023

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

Application is allowed. Annexure A is taken on record.

CRM-M-21421 of 2015

Prayer in this petition is to quash complaint No.798 dated 31.05.2013 (Annexure P.2) filed under Section 138 of the Negotiable Instruments Act, 1881; and order dated 26.05.2014 (Annexure P.3) 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.798 dated 31.05.2013 (CIS No.1082/2014) 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

Instruments Act. After recording preliminary evidence, summoning order was passed on 05.08.2013. 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 26.05.2014 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. The office of petitioner No.1 on 09.06.2015 came to know of the proclamation order dated 26.05.2014 vide which the petitioners were declared proclaimed persons.

4. Vide order dated 07.07.2015 passed by this Court, notice of motion was issued and petitioners were directed, in the meantime, to surrender before the concerned trial Court within ten days and that on their appearance, they shall be admitted to interim bail. It is not disputed that in compliance of this order, petitioners have since surrendered before the trial Court and have been allowed interim bail.

5. Now the question is that whether the impugned order dated 26.05.2014 deserves to be quashed.

6. Learned counsel for the petitioners has drawn attention towards the various zimni orders (Annexure A) passed by the trial Court prior to declaring them as proclaimed persons. It is revealed that after passing the summoning order on 05.08.2013, summons were sent through registered post and on the basis of postal receipt produced in the Court, service was presumed as per order dated 23.09.2013 and bailable

warrants were directed to be issued. As per order dated 08.01.2014, bailable warrants were received back unserved and by observing that despite issuing bailable warrants many times, the accused were not served, so, warrants of arrest were directed to be issued. The same were received back unserved on the next date of hearing i.e. 20.02.2014 and proclamation under Section 82 Cr.P.C was directed to be issued for 03.05.2014 with further direction to publish the same in a notified national newspaper.

7. On 26.05.2014, the following order was passed by the Court:-

“Today the case was fixed for presence of accused. Case has been called several times but no one has come present on behalf of the accused. It is already 2.30 p.m. 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 Cr.P.C and he would undertake further exercise of evidence only when the accused is arrested and 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 the accused is arrested and produced before the court. File be consigned to record room after due compliance.”

8. It is, thus, apparent from the above-said order that despite the fact that petitioners were never served in any manner. The office of

petitioner No.1 on 09.06.2015 came to know of the proclamation order dated 26.05.2014 vide which the petitioners were declared proclaimed persons.

9. Apart from above, as petitioners were never served in any manner, 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 interim 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 26.05.2014, 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

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(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No