

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

266.

CRM-M No.15645 of 2023 (O&M)

Date of Decision:22.11.2023

Jai Ambey Electricals Ltd. and another

...Petitioners

Versus

State of Haryana and another

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Naveen Bawa, Advocate
for the petitioners.

Mr. Dhurv Sihag, AAG, Haryana.

Mr. Kushager Goyal , Advocate
for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court by way of second petition filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 12.06.2017 (Annexure P-3) passed by the learned Judicial Magistrate Class 1st Class, Hisar in NACT No.1739 of 2015 titled as *M/s Parmanand Murari Lal Vs. Jay Ambey Global Electricals Limited and another* whereby the petitioner has been declared a proclaimed person as well as FIR No.171 dated 08.03.2021 registered under Section 174-A IPC at Police Station Hisar Sadar, District Hisar (Annexure P-4).

2. In brief, the facts are that the petitioners had obtained loan of ₹11 lakhs on interest @ 15% per annum from respondent No.2-complainant and issued two cheques No.000070 dated 08.09.2015 and 000073 dated 11.09.2015 amounting ₹5 lakhs each in lieu thereof. However, on presentation, both the

cheques were dishonoured with remarks 'funds insufficient' vide memos dated 11.09.2015 and 14.09.2015 respectively. Thereafter, legal notice under Section 131 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act) was issued to the petitioners and ultimately, complaint under Section 138 of the NI Act was filed in which impugned order was passed.

3. At the very outset, learned counsel appearing for the petitioners submits that the matter has been compromised between the petitioners and respondent No.2-complainant before the Mediation and Conciliation Centre of this Court, according to which, petitioners have already given two demand drafts No.001830 and 001829 amounting ₹5 lakhs and ₹6 lakhs respectively to respondent No.2-complainant as full and final payment. Further, it was settled that respondent No.2-complainant would have no objection in case the impugned order dated 12.06.2017 as well as FIR No.171 dated 08.03.2021 under Section 174-A IPC are quashed by this Court.

4. Learned counsel for the petitioner has produced in Court copy of order dated 17.07.2023 passed by the learned Judicial Magistrate 1st Class, Hisar whereby the complaint filed by respondent No.2-complainant has been dismissed as withdrawn, in view of the compromise entered between the petitioners and respondent No.2-complainant. A copy of the said order is taken on record as Annexure A-1 and registry is directed to put the same at appropriate place.

5. It is further contended that the petitioner was never served either through ordinary/RC or bailable/non-bailable warrants and therefore, the learned trial Court without recording its satisfaction before issuance of process under Section 82 Cr.P.C. had issued proclamation vide order dated 29.04.2017 and

ultimately, declared the petitioner as proclaimed person vide impugned order dated 12.06.2017.

6. Per contra, Mr. Kushager Goyal, learned counsel appearing for respondent No.2-complainant admits to the factum of compromise and dismissal of the complaint as withdrawn, in view of the compromise entered into between the parties.

7. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

8. A perusal of the zimni orders shows that the petitioner was never served through ordinary/RC process, much less, bailable/non-bailable warrants remained unexecuted. While issuing proclamation, the trial Court did not record any reason that the petitioner was intentionally absconding or concealing himself from the process of law. This Court in the judgment passed in ***Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506*** has held that the Court is first required to record its satisfaction before issuance of process under Section 82 Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in ***Sonu vs. State of Haryana 2021 (1) RCR (Cri.) 319***, it has been held that the conditions specified in Section 82 (2) Cr.P.C. for the publication of a proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation as nullity. Once the impugned order passed under Section 82 Cr.P.C. is found to be suffering from incurable illegality, the FIR registered on the basis of the same under Section 174A IPC would not survive either.

9. Keeping in view the aforesaid fact and the fact that the matter has been compromised between the petitioners and respondent No.2-complainant and the complaint has also been dismissed as withdrawn in view of the said compromise vide order dated 17.07.2023 passed by the Judicial Magistrate 1st Class, Hisar, impugned order dated 12.06.2017 (Annexure P-3) as well as the FIR No.171 dated 08.03.2021 registered under Section 174-A IPC at Police Station Hisar Sadar, District Hisar (Annexure P-4) and all subsequent proceedings arisen therefrom are quashed.
10. The instant petition stands disposed of in above terms.

(HARPREET SINGH BRAR)
JUDGE

November 22, 2023
Pankaj*

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