

221 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16794-2023
Date of decision: 24.11.2023

Reena SharmaPetitioner

Versus

Karnail Ram ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Meenu Salwan, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for setting aside of order dated 15.09.2022 (Annexure P-4) passed by the learned Judicial Magistrate First Class-4, Jalandhar, whereby, the petitioner has been declared as proclaimed person in a complaint case i.e. NACT-3907-2018 dated 06.07.2018 titled as 'Karnail Ram Vs. Reena Sharma' (Annexure P-1)

2. Mr. Ravi Malhotra, Advocate puts in appearance on behalf of the respondent and filed his *vakalatnama* in the Court today which is taken on record.

3. Learned counsel appearing for the petitioner, *inter alia*, contends that a complaint under Section 138 of the Negotiable Instruments Act (in short 'the Act') was filed against the petitioner on the ground of dishonouring of cheque bearing No. 386137 dated 07.05.2018 amounting to Rs. 1,00,000/- issued in favour of the complainant/respondent by the petitioner in discharge of her liability. Thereafter, the respondent issued legal notice dated 25.05.2018 and the present complaint was registered under the Act. Thereafter, the

CRM-M-16794-2023**-2-**

petitioner was appeared before the learned trial Court and released on bail on 11.06.2019. It is further submitted that the petitioner was regularly appearing before the learned trial Court but due to her illness, she could not appear before the trial Court as she was suffering from Peptic Ulcer, Migraine, Hypertension, Diabetes and other ailments and ultimately on 21.12.2021, the trial Court issued non-bailable warrants against her. On 07.07.2022, the learned trial Court issued proclamation against her and she was declared proclaimed person vide order dated 15.09.2022. Aggrieved by the said impugned order dated 15.09.2022 (Annexure P-4), the petitioner has approached this Court by way of instant petition.

4. Learned counsel for the petitioner submits that the petitioner is residing alone in her house and there is no other member in her family to look after her. Her treatment started at PGIMER, Chandigarh from 25.09.2021 and during her treatment she was residing with her sister at Mohali. As per statement dated 10.08.2022 of serving official, a copy of the proclamation was affixed on the door of the accused. Therefore, proclamation was not published as per mandatory requirements of Section 82(2)(i) of Cr.P.C. and as per the knowledge of petitioner, the serving official has not done any proclamation at her residence as at that time, the petitioner was residing at Mohali with her sister and was undergoing treatment and when she returned to her house, she did not find any notice nor any affixation regarding the proclamation. Ultimately, vide impugned order dated 15.09.2022 (Annexure P-4), the petitioner was declared as proclaimed person. It is contended that the impugned order is liable to be set aside on the ground that the mandate of

Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial

Court.

5. Learned counsel for the petitioner further submits that the petitioner undertakes to appear before the trial Court on each and every date.

6. I have heard learned counsel for the parties and perused the record of the case with their able assistance and with the consent of parties, the matter is taken up for final disposal.

7. While the scheme of criminal justice system necessitates curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

8. A perusal of the impugned order reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioner has absconded or is concealing herself. 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 of 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

CRM-M-16794-2023**-4-**

‘irregularity’ and renders the proclamation and proceedings subsequent thereto a nullity.

9. The sole purpose of issuance of non-bailable warrants or issuance of proclamation is to secure presence of the accused before the trial Court. The petitioner in the present case has herself come forward and has undertaken to appear before the trial Court on each and every date.

10. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 15.09.2022 (Annexure P-4) vide which the petitioner was declared proclaimed person, is set aside, subject to payment of Rs.10,000/- as costs payable to the respondent/complainant.

11. The petitioner is directed to appear before the trial Court within a period of 15 days from the date of receipt of certified copy of this order and on her doing so, she shall be admitted to bail on her furnishing bail bonds and surety bonds to the satisfaction of the trial Court.

(HARPREET SINGH BRAR)
JUDGE

24.11.2023*Neha*

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