

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

Sr. No.257

CRM-M-19403-2022

Date of decision : 24.01.2023

Sonu Trading Company and another

.....Petitioner(s)

Versus

State of Punjab and another

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Ashish Kumar, Advocate for
Mr.Parveen Chauhan, Advocate for the petitioner(s)

Mr. Kamalpreet Bawa, AAG, Punjab

AMAN CHAUDHARY, J.

Present petition has been filed under Section 482 CrPC for setting aside the order dated 24.03.2022, Annexure P-3, passed by Judicial Magistrate Ist Class, Tarn Taran, whereby the petitioner has been declared as proclaimed offender in a complaint under Section 138 of the N.I. Act.

Learned counsel contends that the complaint under Section 138 of NI Act was filed against the petitioners. Though the summoning order was passed on 10.02.2021, which has been appended as Annexure P-2, it is his categoric case that complainant-respondent No.2 failed to get the issue process, which was done only after 29.07.2021 and there also neither summons were executed upon the petitioner nor bailable or non-bailable warrants were issued. The proclamation was issued based on the presumption that petitioner No.2 was evading service, which as a matter of fact was incorrect. To substantiate the aforesaid submission, learned counsel has relied upon the *zimni* orders passed by the trial Court. He

further submits that petitioner No.2 is working as salesman of cattle feed and thus, remained in the area of District Moga, to supply the feed and recover the dues from the farmers by visiting door to door and the said area of working is about 125 Kms away from his native village. He further submits that in compliance of order dated 07.05.2022 passed by this Court, directing him to appear before the trial Court within 10 days, upon which, the trial Court was to release on interim bail, the petitioner surrendered before the trial Court and was admitted to interim bail, whereafter, he has been regularly appearing. He has produced the copies of the zimni orders passed by the trial Court. He is not involved in any other criminal case. The absence of the petitioner before the trial Court was neither willful nor deliberate. To buttress his submission, he places reliance on the judgment of this Court in **Gurbir Singh Mundi vs. State of Punjab and another** CRM-M-49283-2021, decided on 16.12.2021,

On the other hand, learned State counsel submits that the impugned order has rightly been passed on account of non appearance of the petitioners.

Heard.

In the case of **Gurbir Singh Mundi** (supra), it was held that provisions of Section 82(2) Cr.PC. are to be mandatorily complied with cumulatively and not alternatively. The Court had quashed the order declaring the petitioners therein as proclaimed persons on the ground that declaration was not read publicly in some conspicuous place of town or village, in which the accused ordinarily resides.

Adverting to the facts of the present case inasmuch the

petitioners were never served, thus could not appear before the trial Court, which appears to be justified explanation of absence. At times, the accused can be prevented by sufficient reasons such as no effecting of service as in the present case, to put an appearance before the Court, as such absence cannot necessarily be construed as deliberate and willful. However, it is incumbent upon them to join the proceedings, before the trial Court, for the culmination of the same. Thus, keeping in view the facts and circumstances of this case that the petitioners had joined the proceedings in compliance of the order passed by this Court and the judgment referred to hereinabove being applicable to the instant case, and to make the ends of justice meet, the present petition deserves to be allowed.

Accordingly, the impugned order dated 24.03.2022, Annexure P-3, passed by Judicial Magistrate Ist Class, Tarn Taran is set aside.

24.01.2023
gsv/s.sharma

(AMAN CHAUDHARY)
JUDGE

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