

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

260

CRM-M-22358-2022 (O&M)

Date of decision: 11.10.2023

Sher Mohammad

....Petitioner

Versus

M/S Reliance Commercial Finance Ltd and Anr

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Devender Kumar, Advocate for the petitioner

Mr. Dhruv Sihag, AAG Haryana

AMAN CHAUDHARY. J.

1. The present petition has been filed for quashing of the impugned order dated 04.02.2020, Annexure P-3 passed by Judicial Magistrate 1st Class, Gurugram in complaint No.18960 of 2017 dated 24.11.2017 filed under Sections 138 & 142 NI Act, titled 'M/s Reliance Commercial Finance ltd. vs. Momina Sher Mohammad' vide which the petitioner has been declared a proclaimed person.

2. Learned counsel contends that the name of the petitioner is Sher Mohammad, whereas in the complaint, the name mentioned as Momina Sher Mohammad as also the address mentioned therein were incorrect, as he had never resided there and his address is Softa(1), Gadpuri, Palwal, Haryana as mentioned in the Aadhar Card, appended with the petition. Even as per the cheque issued by the petitioner, the name mentioned is the same as in the present petition. It is on account of the aforesaid facts that he was never served but still came to be declared as proclaimed person by the trial Court vide order dated 04.02.2020. His

absence is neither wilful nor deliberate and on account of the reason aforesaid. He is ready and willing to join the proceedings and it is prayed that one opportunity may be granted to him to surrender before the trial Court.

3. Learned State counsel opposes the same by submitting that the impugned order has been rightly passed by the trial Court on account of non-appearance of the petitioner.

4. Heard.

5. There is no necessity of calling upon for any response from respondent No.1, in view of the order this Court is proposing to pass, it being not prejudicial to its interest.

6. The very purpose of initiation of proclamation proceedings, is to compel and secure the presence of the accused to face trial and establish the rule of law, as also to ensure finalization of the proceedings.

7. This Court finding the absence of the accused being on account of the fact that he had met with an accident, thus was advised two months' complete bed rest in **Anurag Sharma vs. Parkash Yadav**, CRM-M-47844-2023, vide order dated 21.09.2023, directed him to surrender before the trial Court, and file an application for grant of bail. Similarly, in **Darbar Singh vs. State of Haryana and Another**, CRM-M-2845-2023, decided on 18.01.2023 the accused, who was declared person, was directed to surrender before the trial Court, upon which he was to be granted bail, this Court found that he was posted as SPO elsewhere, when the summons were issued therefore he could not appear.

8. Adverting to the facts of the present case, the petitioner was declared proclaimed person without effecting proper service upon him, the address

mentioned in the complaint as also his name being incorrect.

9. Keeping in view the facts and circumstances of the case, judgments referred to hereinabove, the readiness and willingness of the petitioner to surrender and join the proceedings, which was incumbent upon him for the culmination of the same, the present petition deserves to be and is allowed, in the interest of justice, so as to facilitate expediting the trial and for taking it to its logical end.

10. As a consequence of the aforesaid, the impugned order dated 04.02.2020 is set aside and the petitioner is directed to surrender before the trial Court on or before 24.10.2023 and deposit Rs.10,000/- as costs to be paid to the complainant-respondent No.1. On furnishing bail/surety bonds, the trial Court shall release him on bail subject to its satisfaction. He is also directed to furnish an undertaking by way of an affidavit that he will appear on each and every date of hearing before the trial Court, unless specifically exempted by the Court. He shall not leave the country without prior permission of the Court. The trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case.

11. Before parting with this order, it is made abundantly clear that in case the petitioner does not adhere to the aforesaid, the present petition shall be deemed to have been dismissed without any reference to this Court.

(AMAN CHAUDHARY)
JUDGE

October 11, 2023

M.Kamra

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No