

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

CRM-M-22137-2023

Date of Decision: May 04, 2023

MANJEET SINGH SAHI AND ANR
Versus

..... Petitioners

STATE OF HARYANA

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Ms. A.K. Khurana, Advocate for the petitioners.
Mr. Ramesh Kumar Ambavta, A.A.G., Haryana.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 482 CrPC, prayer has been made for seeking quashing of order dated 21.11.2022 passed by the Court of Ld. JMJC, Panipat whereby the petitioners were declared as proclaimed persons as well as the subsequent proceedings i.e. the FIR No.947 dated 26.11.2022 registered under Section 174-A of IPC at P.S. City Panipat, District Panipat.

2. On account of dishonour of cheques bearing No.016902 and 016905 dated 15.11.2018 and 19.11.2018 respectively, a complaint came to be filed against the petitioners wherein they were summoned under Section 138 of Negotiable Instruments Act, 1881. On account of their non-appearance, the petitioners were declared as proclaimed persons vide order dated 21.11.2022 passed by Court of Ld. JMJC, Panipat followed by registration of FIR No.947 dated 26.11.2022 registered under Section 174-A of IPC.

3. Impugning the order dated 21.11.2022 and the subsequent proceedings i.e. the aforementioned FIR, learned counsel for the petitioners submits that the declaration of petitioners as proclaimed

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persons was wholly in violation of the mandatory procedure prescribed under Section 82(1) of CrPC as no clear cut 30 days' period was granted to them, so as to put in appearance before the trial Court and thus the proceedings carried out were wholly vitiated.

4. On the other hand, learned State counsel submits that petitioners were having complete knowledge about the factum of pendency of complaint filed against them. He also submits that the proclamation was duly effected on 19.08.2022 in pursuance to an order dated 07.09.2022 and the petitioners failed to appear in pursuance thereof resulting into passing of impugned order against them.

5. I have heard learned counsel for the parties and have gone through the paper-book. I find substance in the submissions made on behalf of the petitioners.

6. As per records, in the present case the proclamation was ordered by the trial Court on 07.09.2022 with 20.10.2022 being the date for appearance before the trial Court. On 20.10.2022, the matter was adjourned to 21.11.2022 by mentioning that by that time the statutory period of 30 days had not expired whereas on 21.11.2022 on account of non-appearance of petitioners, they were declared as proclaimed persons. In the aforesaid facts and circumstances, the trial Court apparently committed an error of law while declaring the petitioners as proclaimed offenders on 21.11.2022 as for the said date, there was no proclamation made by any Court under Section 82 of CrPC calling for their appearance. Thus no order under Section 82 of CrPC, declaring

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the petitioners as proclaimed offenders could have been made on 21.11.2022, in the absence of any specific proclamation for the said date. More than that, the proclamation as effected in the present case was even in violation of Section 82(1) of CrPC as the statutory period of 30 days was not granted to the petitioners to put in appearance before the Court below on 20.10.2022 i.e the date for which they were called upon in pursuance to proclamation as ordered on 07.09.2022. Undisputedly, Section 82 which forms part of Chapter VI of the CrPC regulates the process of appearance of an individual who has been arrayed as an accused before the Court, the same as such regulates the liberty of an individual and thus stems from Article 21 of Constitution of India and has to be treated as mandatory and inviolable.

7. In view of discussions made herein-above, the order dated 21.11.2022 passed by the Court of Ld. JMJC, Panipat including the subsequent proceedings arising therefrom i.e. FIR No.947 dated 26.11.2022 registered under Section 174-A of IPC are hereby quashed. It is however, made clear that the petitioners shall surrender before trial Court within a period of 15 days from today and shall furnish their bail bonds/surety bonds. The aforesaid surrender shall however be subject to payment of cost of Rs.20,000/- to be paid to the complainant.

8. Considering the fact that the cheques in question pertain to the year 2018, the trial Court is requested to dispose of the complaint within a period of 6 weeks from the date the petitioners put in appearance.

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9. The matter is being decided without issuing notice to respondent-State, lest it may delay the disposal of the complaint pending before the trial Court.

04.05.2023
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(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>