

CRM-M No.24415 of 2023 (O&M)

2023:PHHC:159259

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

271

CRM-M No.24415 of 2023 (O&M)

Date of Decision: 12.12.2023

Amlesh**.....Petitioner****Vs****State of Haryana****....Respondents****CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. Mohit, Advocate
for the petitioner.

Mr. Viney Phogat, D.A.G., Haryana.

HARKESH MANUJA, J. (Oral)

[1]. By way of present petition under Section 482 Cr.P.C., prayer has been made for quashing of order dated 30.09.2019 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Panipat, whereby the petitioner was declared as proclaimed person in the proceedings arising out of CIS No.NACT/2842/2017 dated 25.10.2017 titled '*HDFC Bank Ltd. vs. Amlesh Sharma*' followed by registration of FIR No.897 dated 23.10.2019 registered under Section 174-A IPC at Police Station City Panipat, District Panipat.

[2]. Briefly stating, petitioner was summoned under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as 'the N.I. Act') in the complaint filed at the instance of HDFC Bank Limited. On account of non-appearance of petitioner, proceedings under Section 82 Cr.P.C. were ordered against petitioner on 19.03.2019. The said order is reproduced hereunder:-

CRM-M No.24415 of 2023 (O&M)

2023:PHHC:159259

*“Present: Sh. Gagandeep Singh, AR of the complainant bank assisted by
Sh. Mukesh Shandilya, Advocate*

Order dated 19.03.2019

*Warrants issued against accused Amlesh Sharma received back unexecuted with report ‘not traceable in locality’. In view of the report on the warrant, I have reason to believe that accused Amlesh Sharma is intentionally absconding and his presence cannot be secured through ordinary process. Therefore, **a written proclamation under Section 82 Cr.P.C. be issued against accused Amlesh Sharma son of Kalyan Dutt, resident of H.No.87, New Parkash Nagar, Preet Vihar Colony, Panipat requiring him to appear before this court on 21.05.2019.***

***Proclamation be published in daily newspaper Uttam Hindu/Naya Lokyug/Hari Bhomi/Dainik Chetna on or before 15.04.2019 so as to afford minimum 30 days time to accused to appear before the Court.** Complainant shall deposit the requisite publication expenses within two weeks positively.*

Complainant shall also furnish list of properties of the accused along-with his affidavit for initiating attachment proceedings under Section 83 Cr.P.C.

*VIKRANT
(UID No.HR0385)
JMIC, Panipat
19.03.2019”*

As a consequence thereof, petitioner was declared as proclaimed person vide order dated 30.09.2019 followed by registration of FIR No.0897 dated 23.10.2019 under Section 174-A IPC against her.

[3]. Impugning the aforementioned order dated 30.09.2019 as well as FIR No.0897 dated 23.10.2009, learned counsel for the petitioner submits that proclamation under Section 82 Cr.P.C. was never effected in the name of petitioner i.e. Amlesh W/o Sh. Ashok Kumar as the same was issued against/*qua* Amlesh

Sharma son of Kalyan Dutt R/o H.No.87, New Parkash Nagar, Preet Vihar Colony, Panipat. He thus submits that without there being proclamation order against petitioner, the proceedings carried out against her were vitiated.

[4]. Learned counsel also submits that later, a settlement came to be arrived at between the parties as petitioner discharged her liability by paying the entire cheque amount in favour of complainant and in pursuance thereof, the complaint under Section 138/142 of the N.I. Act, was withdrawn by complainant and complaint file was ordered to be consigned to the record room, vide order dated 10.03.2023 passed by the Judicial Magistrate First Class, Panipat.

[4]. On the other hand, learned State counsel submits that petitioner was having knowledge of pendency of proceedings under Section 138 of the N.I. Act as well as summoning order, but she deliberately chose not to appear before the Trial Court resulting into her declaration as proclaimed person followed by registration of FIR against her.

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

[6]. Perusal of order dated 19.03.2019 passed by the Judicial Magistrate Ist Class, Panipat shows that proclamation under Section 82 Cr.P.C. was ordered to be issued against one Amlesh Sharma son of Kalyan Dutt, whereas petitioner happens to be Amlesh wife of Sh. Ashok Kumar and daughter of Kalyan Dutt; accordingly, no proclamation whatsoever was effected against petitioner Amlesh D/o Kalyan Dutt thus, the proceedings carried out while declaring her as proclaimed person were in violation of the procedure laid down under Section 82

Cr.P.C. Once the statutory provision i.e. Section 82 Cr.P.C. regulates the liberty of an individual, the same has to be followed *stricto sensu* being inviolable, stemming from Article 21 of the Constitution of India.

[7]. In view of discussion made hereinabove, the present petition is allowed. Consequently, the impugned order dated 30.09.2019 passed by the Judicial Magistrate Ist Class, Panipat declaring the petitioner as proclaimed person is set aside. The FIR No.897 dated 23.10.2019 registered under Section 174-A IPC at Police Station City Panipat, District Panipat along with all consequential proceedings arising therefrom is also quashed.

December 12, 2023

Atik

Whether speaking/reasoned

Whether reportable

(HARKESH MANUJA)

JUDGE

Yes/No

Yes/No