

112

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-25960-2023 (O&M)
DATE OF DECISION: 14.07.2023****Aanchal Devjani****...Petitioner****Versus****State of Haryana and another****...Respondents****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Vikas Jain, Advocate,
For the petitioners.

Ms. Svaneel Jaswal, Addl. AG, Haryana.

ARUN MONGA, J. (ORAL)**CRM-28528-2023**

For the reasons stated in application, same is allowed and documents contained at Annexures P-5 to P-8 are taken on record, subject to all just exceptions.

MAIN CASE

Petitioner seeks quashing of the impugned order dated 14.02.2023 (Annexure P-4), passed by the learned Judicial Magistrate First Class, Gurugram, in a complaint case under Section 138 of the Negotiable Instruments Act, 1881 (referred to as the 'NI Act'), along with all consequential proceedings. The order declared the petitioner as a proclaimed person.

2. Petitioner's case is that she was married to Animesh Devjani on 09.11.2003, and they have two sons from the marriage. Her husband runs a tour and travel agency called Pick and Drop Tours and Travels. Although she is the proprietor, but her husband manages the entire business. The company suffered losses, resulting in the mortgaged property being taken into possession and auctioned by respondent No. 2. The petitioner's marriage with Animesh Devjani

has been dissolved by a decree of divorce granted by the learned Family Court, Bhopal, under Section 13(B) of the Hindu Marriage Act, 1955, on 26.11.2022.

3. The petitioner states that on 28.11.2022, her ex-husband called her for a final settlement and the return of documents and clothes for their children. However, she alleges that she was maltreated, assaulted, and threatened. However, she chose not to file a complaint against him. Again on 07.04.2023, another incident occurred where she was again physically abused by her ex-husband in Bhopal. She then filed a complaint before the Deputy Commissioner of Police, Bhopal. During the inquiry into the complaint, Animesh Devjani revealed that the petitioner had been declared a proclaimed person by the learned Judicial Magistrate Ist Class (JMIC), Gurugram, in the NACT complaint filed by respondent No. 2, as per the order dated 14.02.2023 (Annexure P-4).

4. Learned counsel for the petitioner argues that the petitioner was unaware of impugned proclamation. The non-bailable warrants issued against her by the learned JMIC, Gurugram were returned unexecuted. The proper procedure was not followed, and the petitioner has been wrongly declared a proclaimed person. No FIR under Section 174-A of the Indian Penal Code (IPC), as directed by the learned JMIC, Gurugram, in the impugned order dated 14.02.2023, has been registered yet. The petitioner is not involved in any other case, and her non-appearance is not intentional. The counsel further contends that due to the matrimonial dispute between the petitioner and her ex-husband, she left her matrimonial home long before the issuance of the non-bailable warrants against her.

5. The learned counsel for the petitioner also argues that summoning order dated 25.07.2019 (Annexure P-1) passed by the learned JMFC, Gurugram, shows that the proceedings were initiated due to the dishonoring of cheques numbered 553673 and 553672 dated 12.07.2018, each amounting to Rs. 1,99,194/-. The counsel asserts that respondent No. 2 would not suffer any

prejudice if the petitioner joins the pending proceedings before the learned JMFC, Gurugram.

6. On the other hand, the learned State counsel opposes the petition, claiming that the accused/petitioner intentionally did not appear before the lower court despite the issuance of various non-bailable warrants and a proclamation against her.

7. Heard. Perusal of file shows that after declaring the petitioner as a proclaimed person on 14.02.2023, the case was fixed for the filing of a list of the accused/petitioner's properties. However, the counsel for the complainant/respondent No. 2 stated that they could not arrange the list of the accused's property. File was then consigned to the record room with a note in red ink not to destroy the record. While the proceedings against the petitioner arising out of the complaint case are still continuing.

8. Reference may be had to **P. Mohanraj and others Vs. Shah Brothers Ispat Private Limited¹**, wherein Supreme Court has held that the essence of a proceeding under Section 138 of the NI Act, though worded as an offense, is actually aimed at efficiently and inexpensively recovering the amount mentioned in the dishonored cheque, along with interest and costs, through a summary proceeding.

9. In the present case, the petitioner is ready and willing to join the pending proceedings before the learned JMFC, Gurugram. The contentions raised by the petitioner's counsel, including her being a mere rubber stamp and any financial liability falling on her ex-husband, will be evaluated by the trial court after both sides present their evidence. The petitioner will have the opportunity to present all available pleas and defenses before the trial court as per the law.

10. Consequently, the instant petition is allowed, and the impugned order dated 14.02.2023 (Annexure P-4) declaring the petitioner as a proclaimed

person and directing the concerned police station to initiate proceedings under section 174-A of IPC is quashed. The petitioner is directed to join the proceedings before the learned trial court within three weeks from today and to continue to appear before the court as and when required.

11. Pending application(s), if any, shall also stand disposed of.

JULY 14, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No