

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

(206/1)

**CRM-M-27211-2022
DATE OF DECISION:-15.03.2023**

Pal Singh

...Petitioner

vs.

State of Haryana & another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Divyam Singh, Advocate, for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARKESH MANUJA, J.

By way of present petition filed under Section 482 Cr.P.C. prayer has been made for setting aside the order dated 28.03.2019 (Annexure P-2) passed by the learned JMIC, Panipat, whereby, the petitioner has been declared as a proclaimed person.

On account of dishonour of a cheque bearing number 341185 dated 14.06.2017 of an amount of Rs.90,000/-, a complaint under Section 138 of the Negotiable Instruments Act, 1881, was filed against the petitioner, at the instance of respondent No.2 wherein, he was summoned vide order dated 10.08.2017 (Annexure P-1). On account of his non-appearance before the trial Court, petitioner was declared as proclaimed person vide order dated 28.03.2019 which has been impugned by way of present petition.

Referring to the status report dated 03.09.2022 filed at the instance of respondent-State, learned counsel for the petitioner submits that a perusal of the statement dated 12.03.2018 made by the summoning staff shows that no effort was made for reading the proclamation publically or affixing the

same at some conspicuous part of the house of the petitioner besides having affixed the same at some conspicuous part of the Court premises. He further submits that in the absence thereof, Clause (i) of Sub-Section (2) of Section 82 Cr.P.C. was never complied with before declaring the petitioner as proclaimed person vide impugned order and thus, the proceedings against him will liable to be dropped.

On the other hand, learned State counsel submits that petitioner was personally served with the proclamation as per report submitted by the summoning staff and therefore, petitioner was barred for raising the plea as regards the non-compliance of Clause (i) of Sub-Section (2) of Section 82 Cr.P.C. having complete knowledge about the pendency of the present case against him.

Despite service, no one has put in appearance on behalf of respondent No.2.

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.

A perusal of the statement dated 12.03.2018 annexed as Annexure R-1 attached with the status report dated 03.09.2022 shows that though the summons were stated to have been, served upon the petitioner personally who refused to accept the same, no effort was ever made by the serving officer so as to read the proclamation publically in some conspicuous place of the town besides not having affixed the same to any conspicuous part of the house of the petitioner or the Court premises which was *sine qua non* as per Clause (i) of Sub-Section (2) of Section 82 Cr.P.C more particularly when there was independent witness to the service having been effected

upon the petitioner. Since, Section 22 regulates the liberty of an individual thus, stemming from Article 21 of the Constitution of India has to be applied mandatorily being inviolable. Even the learned trial Court while passing the impugned order failed to appreciate the report submitted by the summoning officer in its correct perspective and did not notice the fact of non-compliance of Clause (i) of Sub-Section (2) of Section 82 Cr.P.C.

As regard FIR No.735 dated 13.12.2019 under Section 174-A IPC, registered at Police Station City Panipat, District Panipat, it may be pointed out here that petitioner has already been granted concession of anticipatory bail by this Court vide order dated 15.03.2023 passed in CRM-M-26867 of 2022. Although at the time of issuance of notice of motion on 07.07.2022, this Court granted liberty to the petitioner to surrender before the Illaqa Magistrate within a period of 10 days thereof and in case of compliance, the impugned order dated 28.03.2019 was to be kept in abeyance and the petitioner was to be admitted to interim bail subject to furnishing of bail bonds by him to the satisfaction of the trial Court.

Learned counsel for the petitioner has very fairly submitted that though in pursuance to the notice of motion order, the petitioner had deposited the entire amount of cheque of Rs. 1 Lakh, however, pertaining to complaint in question i.e. **NACT No.2115-2017** titled **Allahabad Bank Vs. Pal Singh**, was consigned to the record room on 22.11.2019, the petitioner could not appear before the trial Court and submits that in case, the petitioner is granted another opportunity, he shall appear before the Court below within a period of 15 days from today and shall furnish his bail bonds/surety bonds to the satisfaction of the Court concerned. The order dated 22.11.2019 passed by the Court of JMIC, Panipat is reproduced

hereunder:

“Copy of FIR registered against accused/proclaimed person Pal Singh received from SHO, P.S. City, Panipat.

Details of properties of the accused/proclaimed person not filed by the complainant. Complainant statement recorded to the effect that he is not able to furnish the details of the properties pertaining to accused. In such circumstances it is impossible to comply with the provision of 83 Cr.P.C. Hence, in view of the abovesaid statement, the present complaint be consigned to record room after due compliance. Ahlmad is directed to give a red ink note on the file that it be not destroyed and be restored to its original number as and when the accused is arrested or produced before the court.”

Accordingly, petitioner having deposited the cheque amount, shall surrender before the trial Court within a period of 15 days from today and shall furnish the bail bonds/surety bonds to the satisfaction of the Court concerned.

Resultently, in view of the discussion made hereinabove, present petition is allowed, impugned order dated 28.03.2019 passed by the trial Court whereby the petitioner was declared as proclaimed person is hereby quashed.

15.03.2023
anil

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No