

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-26104-2023

Date of Reserved: 16.11.2023

Date of Decision: 28.11.2023

DALBIR SINGH

.....Petitioner

Vs.

STATE OF HARYANA AND ANOTHER

....Respondents

CORAM: HON'BLE MR. JUSTICE SANJIV BERRY

Present: Mr. G.N. Malik, Advocate with
Mr. Sameydeen, Advocate for the petitioner.

Mr. Surender Singh, AAG, Haryana.

Mr. Saurabh Dalal, Advocate for respondent No.2.

SANJIV BERRY,J.

The instant petition under Section 482 Cr.P.C. has been moved by the petitioner seeking quashing of the impugned order (Annexure P-5) dated 13.03.2022, passed by the learned Judicial Magistrate Ist Class, Rohtak, in *complaint No.262/2021 dated 05.02.2021* titled '*M/s Saraswati Tiles Versus Dalbir Singh*' under Section 138 of the Negotiable Instruments Act (for short 'the Act'), whereby the petitioner has been declared as proclaimed person and all consequential proceedings arising therefrom and for stay of operation of the impugned order dated 13.03.2022 (Annexure P-5).

2. It is, *inter alia*, contended by learned counsel for the petitioner that the petitioner has been falsely implicated in *Complaint Case No.262/2021*, dated 05.02.2021 titled '*M/s Saraswati Tiles Versus Dalbir*

Singh, under Sections 138 and 142 of the Act (Annexure P-1). He further

submits that respondent No.2 is well aware of the fact that the petitioner is serving as Rent Controller in Haryana Waqf Board and in the year 2019, he was transferred from Mewat to Hisar and on 21.10.2021 from Hisar to Ratia (District Office Tohana (Fatehabad). Earlier the petitioner was residing in Hisar, however, at present he is residing in Tohana (Fatehabad). He further submits that petitioner was never served any notice of complaint and he has been wrongly declared as proclaimed person vide order dated 13.03.2022 passed by Judicial Magistrate Ist Class, Rohtak, (Annexure P-5) and the learned Magistrate has not followed the proper procedure laid down under the provisions of Section 82 Cr.PC. He contends that the process of the Court have been sent to the previous address of the petitioner at Rohtak and Hissar although he already stood transferred to Ratia, District Fatehabad much prior to it and as such he did not receive any notice of the proceedings and even the proclamation has also been effected at the previous address where neither the petitioner nor his family members were residing.

3. Learned counsel for the petitioner further submits that the matter has been compromised between the parties and the petitioner is ready and willing to appear before the trial Court for facing the trial and no other criminal case is pending against him. No prejudice is going to be caused to the prosecution if an opportunity is granted to the petitioner.

4. Notice of motion.

5. On the asking of the Court, Mr. Surender Singh, AAG, Haryana, who is present in Court, accepts notice on behalf of the respondent-State and submits that the petitioner has been rightly declared

as proclaimed person vide impugned order and he had not joined the proceedings despite being served during proclamation issued by the concerned Court.

6. Learned counsel appearing on behalf of the complainant admits the fact that the address given in the complaint was of Rohtak and had not disputed the fact that the petitioner has already been transferred from Rohtak to Tohana. He has shown ignorance as to whether any notice was sent at the address at Tohana or not. He, however, admitted that during the course of proceedings compromise have been effected between the parties and the aforesaid complaint No. 262/2021 dated 05.02.2021 titled as *M/s Saraswati Tiles Versus Dalbir Singh*, has already been dismissed as withdrawn vide order dated 09.09.2023 passed by Presiding Officer National Lok Adalat-cum Judicial Magistrate Ist Class, Rohtak.

7. Considering the respective submissions and perusing the record, admittedly a complaint dated 04.01.2021 under Section 138 and 142 of Negotiable Instrument Act was filed by respondent No.2 against the petitioner (Annexure P1) wherein the address given of the petitioner was Rohtak and second address of Hissar. The petitioner had placed on record the transfer order showing that at the relevant time he had already been transferred from Hissar to Ratia and it is specific stand taken by him that he never received any process in the form of notice/proclamation asking him to appear on the given date at any time since he had already been transferred from Hissar. It is also not disputed that the proclamation under Section 82 Cr.P.C has also been got executed at the address given in the complaint where the petitioner is stated to be not residing.

8. During the course of the proceedings on 31.05.2023 following order was passed:-

“ In pursuance of order dated 22.05.2023, passed by this Court, learned counsel for the petitioner has brought a Demand Draft bearing No.000456 dated 30.05.2023, amounting to Rs.50,000/-, drawn in the favour of Saraswati Enterprises, in Court today. It is stated by learned counsel that the name of respondent No.2-Firm is “M/s Saraswati Tiles”, however, its account is in the name of “Saraswati Enterprises”. Photocopy of the aforesaid demand draft is handed over by learned counsel for the petitioner in Court today, which is taken on record, subject to all just exceptions.

Since the petitioner has shown his willingness to amicably settle the dispute with respondent No.2-Firm, accordingly let notice be issued to the respondents.

At the asking of Court, Mr. Ram Kumar Singla, who is present in Court, accepts notice on behalf of respondent No.1/State. He prays for an accommodation to seek instructions and assist the Court in this matter.

List on 21.07.2023.

Petitioner and complainant/respondent No.2 are directed to remain present in Court on the date fixed.

Petitioner shall bring the original of the aforesaid Demand Draft of Rs.50,000/- in Court, on the next date of hearing.

In the meanwhile, no coercive steps shall be taken against the petitioner, till the next date of hearing only.

9. In the meanwhile, settlement was effected between the parties and complainant-respondent No.2 has withdrawn the aforesaid complaint against the petitioner which is evident from the order dated 09.09.2023 placed on record by learned counsel for the petitioner and the

same is not disputed by learned counsel for the respondent No.2, therefore, it is admitted position that on the basis of compromise the aforesaid complaint has since been dismissed as withdrawn where in the impugned order dated 13.03.2022 declaring the petitioner as proclaimed person had been passed.

10. It is the contention of the learned counsel for the petitioner that once the main case in which the petitioner had been declared as proclaimed person without following the procedure, has since been dismissed as withdrawn, therefore, the impugned order deserve to be quashed, in support of his argument he has referred to judgment passed in *Sher Singh Rana vs. State of Haryana, 2023 (1) R.C.R. (Criminal) 185*.

11. After considering the submissions, it is observed that respondent No.2 had filed the complaint No. 262/2021 dated 05.02.2021 titled as *M/s Saraswati Tiles Versus Dalbir Singh,* against the petitioner wherein the summons for his presence were issued by the concerned Court and ultimately the proclamation to procure the presence of the petitioner was issued and duly effected, however it is not controverted on record that at the relevant time when the proclamation was effected the petitioner was not residing at the address given in complaint, who already transferred to Ratia which fact is evident from the perusal of transfer order cited by learned counsel for the petitioner. Therefore it transpires that the proclamation was not duly effected at the address of the petitioner as a consequent he was not in any manner aware of the proceedings going against him and basically he was got unaware and on coming to know of the same he preferred the present petition. It is not

disputed that a compromise was effected after being granted protection by this Court and later the complainant had withdrawn the complaint as is evident from order dated 09.09.2023 whereby the learned Court had dismissed the complaint as having been withdrawn.

12. This being the position, it is evident that proper procedure was not followed by the learned Court while declaring the petitioner as proclaimed person in this case and moreover after passing of the impugned order the said complaint itself has been withdrawn by the complainant. Therefore, where substantive proceedings have already stand culminated the continuation of impugned order declaring the petitioner as proclaimed person in the said case without following the due procedure laid down under Section 82 Cr.P.C and issuing proclamation at an address not being at the actual address of the petitioner where he is residing, continuation of such an impugned order would be nothing but abuse of process of law.

13. Resultantly, considering the facts and circumstances as discussed above, the impugned order dated 13.03.2022, passed by the learned Judicial Magistrate First Class, Rohtak (Annexure P-5) and all consequential proceedings arising therefrom are held liable to be set aside and accordingly set aside.

14. Petition stands allowed.

(SANJIV BERRY)
JUDGE

28.11.2023
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