

203-2

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

CRM-M No. 52208 of 2018 (O&M)

Date of Decision: 05.12.2023

M.D. Seshadri

..... Petitioner

Versus

Indiabulls Financial Services Ltd., Gurugram

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vipin Kumar Sharma, Advocate,
for the petitioner.

Ms. Kiran Bala Jain, Advocate and
Mrs. Pushp Gupta, Advocate
for the respondent.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of order dated 25.10.2017 (Annexure P-12) passed by the learned Judicial Magistrate Ist Class, Gurugram, whereby the petitioner was declared as proclaimed person in case bearing Complaint No. 348 of 2016 under Section 138 of the Negotiable Instruments Act, 1881 (for short "the 1881 Act"), titled "*India Bulls Financial Services Limited Versus M.D. Sheshadri*", as also subsequent proceedings arising therefrom.

[2] Briefly stating, on account of dishonour of cheque bearing Nos. 58814, 58811 and 58815, all dated 17.12.2012 issued at the instance of the petitioner, the complaint (supra) was filed at the instance of respondent, wherein the petitioner was summoned vide order dated 15.09.2016. On account of his (petitioner) non-appearance before the trial Court, an order

dated 06.09.2017 was passed for effecting proclamation under Section 82 of the Code of Criminal Procedure. It was ordered that the proclamation be effected for 25.10.2017. In pursuance thereof, the proclamation was effected on 16.09.2017 for 25.09.2017 being the date for appearance and the statement of the Executant Constable was recorded by the trial Court in this regard on 25.09.2017, which reads as under:-

“ On 16.09.2017 after reaching at the given address to serve the proclamation notice, it came out that accused has left this place. Address as of now is unknown. A copy of proclamation is pasted on the given address. A copy of notice is pasted on the notice board of court. Original notice is presented in your service. ”

[3] Based thereupon and followed by the non-appearance of the petitioner, the trial Court vide order dated 25.10.2017 declared the petitioner as proclaimed person.

[4] Impugning the aforesaid order dated 25.10.2017, learned counsel for the petitioner submits that the statement of Executant Constable was not in consonance with the mandate of Section 82 (2) (i) (a) of the Code of Criminal Procedure, as the proclamation was never read publically in some conspicuous place of the town or village, wherein the petitioner was residing and thus the proceedings effected against the petitioner were vitiated in law.

[5] On the other hand, learned counsel for the respondent despite having knowledge about the pendency of the above complaint before the trial Court, the petitioner deliberately chose not to appear and thus, the impugned order warrants no interference.

[6] After hearing learned counsel for the parties as well as gone through the paper-book, I find substance in submissions made on behalf of the petitioner.

[7] A perusal of statement of Executant Constable recorded on 16.09.2017 shows that it nowhere records the proclamation having been read publically in some conspicuous place of the town or village in which the petitioner was residing, which tantamounts to non-compliance of Section 82 (2) (i) (a) of the Code of Criminal Procedure. The impugned order declaring the petitioner as proclaimed person affected the personal liberty of the petitioner and thus, the mandate of Legislature as laid down in Section 82 of the Code of Criminal Procedure being inviolable was required to be mandatorily followed. In the absence thereof, the order dated 25.10.2017 (P-12) passed by the Judicial Magistrate Ist Class, Gurugram declaring the petitioner as proclaimed person, being violative of Section 82 (2) (i) (a) of the Code of Criminal Procedure, is thus, liable to be quashed.

[8] Ordered accordingly.

[9] The petition stands **disposed off**.

December 05, 2023

'dk kamra'

**(HARKESH MANUJA)
JUDGE**

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