

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

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CRM-M-27458-2023 (O&M)**Date of decision: 29.05.2023**

Ramesh Chand Gupta and another

....Petitioners

Versus

Union Territory Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARYPresent : Mr. Sanjiv Gupta and Mr. Tushar Wadhwa, Advocates
for the petitioners

Mr. Amit Kumar Goyal, APP for UT Chandigarh

AMAN CHAUDHARY. J.

1. The present petition under Section 482 of the Cr.P.C. has been filed for quashing the impugned orders dated 08.11.2021 and 25.02.2022, Annexure P-5 and P-6 passed by learned Chief Judicial Magistrate, Chandigarh whereby proclamation proceedings had been initiated against the petitioners.

2. Learned counsel submits that the petitioners were residing in Sectors 7 and 21 Panchkula respectively as has also been reflected in the list of shareholders annexed with the petitioner with annual return of 2015 whereas in the complaint filed under the Companies Act, the previous address of the petitioners had been mentioned on account of which the petitioners were not served with the notice of the complaint and were declared proclaimed persons vide orders dated 08.11.2021 and 25.02.2021, Annexures P-5 and P-6 respectively. He submits that the provisions of Section 82 Cr.P.C. had not been complied with. He, however, submits that the absence of the petitioners is neither willful nor deliberate and is on account of the reason aforesaid. He submits that the petitioners are ready and willing to join the proceedings, and prays that one opportunity may be granted for the petitioners to surrender before the learned trial Court, which may even be,

subject to payment of costs. To buttress his submission, he places reliance on the judgment of this Court in **Gurbir Singh Mundi vs. State of Punjab and another** CRM-M-49283-2021, decided on 16.12.2021,

3. Notice of motion.

4. Mr. Amit Kumar Goyal, APP for UT Chandigarh, who has appeared on receipt of advance copy of the petition, opposes the petition by submitting that the impugned order is legal and valid and has been rightly passed by the learned trial Court on account of non-appearance of the petitioners.

5. Since no order that may prejudice the interest of the private respondent is proposed to be passed, therefore, there is no necessity of issuing notice to him to seek his response at this stage.

6. Heard.

7. The very purpose of issuance of non-bailable warrants, is to compel and secure the presence of the accused to face trial and establish the rule of law, as also to ensure finalization of the proceedings.

8. Adverting to the facts of the present case that on account of wrong address mentioned in the complaint the petitioners could not be served, thus, they could not appear before the trial Court appears to be justified explanation. At times, the accused can be prevented by sufficient reasons to put an appearance before the Court on a given date and every such absence cannot necessarily be construed as deliberate and wilful. However, it is incumbent upon them to join the proceedings, before the trial Court, for the culmination of the same. Considering the fact that the absence of the petitioners being not wilful or deliberate and their readiness and willingness to surrender and join the proceedings, in case one opportunity is granted to the petitioners, no prejudice shall be caused to any of the

parties, rather their joining the proceedings would help in expediting the trial. Thus, in order to make the ends of justice meet and finding afore-referred judgment being applicable to the instant case, the present petition deserves to be allowed.

9. In view of afore-referred order and the facts and circumstances of this case, the petitioners are directed to surrender before the trial Court on or before 15.06.2023 and deposit Rs.10,000/- each with the District Bar Association, Panchkula and furnish their fresh bail/surety bonds. On so doing, the trial Court shall release them on bail subject to its satisfaction. They are also directed to furnish an undertaking by way of an affidavit that they will appear on each and every date of hearing before the trial Court, unless specifically exempted by the Court. They shall also surrender their passport and will not leave the country without prior permission of the Court and the trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case.

10. Before parting with this order, it is made abundantly clear that in case the petitioner do not adhere to the aforesaid, the present petition shall be deemed to have been dismissed without any reference to this Court.

(AMAN CHAUDHARY)
JUDGE

29.05.2023

S.Sharma(syr)

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No