

131 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29174-2023

DATE OF DECISION:-02.06.2023

Sunil Kumar

...Petitioner.

Vs.

IDFC First Bank Ltd. and another

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Mandeep Singh Kundu, Advocate,
for the petitioner.

HARKESH MANUJA, J.

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of order dated 27.02.2023 passed by the court of Judicial Magistrate Ist Class, Chandigarh, whereby, the petitioner was declared as proclaimed offender.

2. The facts leading to the present case are that on account of dishonour of cheque amounting to Rs.2,19,500/-, the petitioner was arrayed as an accused in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (for short, "1881 Act") wherein, he was summoned vide order dated 31.10.2019. Since, the petitioner was never served, he could not appear before the court, resulting into his declaration as proclaimed person vide order dated 27.02.2023 passed by the court of Chief Judicial Magistrate, Chandigarh. Later, a settlement came to be arrived at between the parties as the petitioner discharged his liability by paying the entire cheque amount in favour of complainant-Bank and in pursuance thereof, the

complaint under Section 138 of the 1881 Act, was withdrawn by complainant and complaint file was ordered to be consigned to the record room, vide order dated 13.05.2023 passed by the court of Judicial Magistrate Ist Class, Chandigarh.

3. The aforesaid order has been impugned by learned counsel for the petitioner while submitting that the petitioner did not reside at the address, which was given by the complainant in the complaint, thus, declaration of the petitioner as proclaimed offender vide order dated 27.02.2023 was totally bad in law as the proceedings under Section 82 Cr.P.C. were not carried out by following the mandatory procedure. In addition, the main complaint under Section 138 of the 1881 Act has already been withdrawn by the complainant-Bank.

4. Notice of motion.

5. Mr. Aditya Grover, Advocate, who is present in the Court accepts notice on behalf of respondent No.1-Bank, whereas, Mr. R.K. Ambavta, AAG, Haryana accepts notice on behalf of respondent No.2-State.

6. Learned counsel representing complainant-bank submits that he has no objection to the success of present petition as the petitioner has already discharged his liability whereas learned State counsel opposes the prayer made on behalf of the petitioner while submitting that the petitioner despite having knowledge about the pendency of proceedings against him, tried to evade the process of law.

7. 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.

8. In the present case, notice issued to the petitioner was received

back with the report that house of petitioner was locked. Thereafter, notice was again issued, which was received back with the report that house number and name of father of petitioner was not mentioned properly. In fact, petitioner is a permanent resident of Shanti Nagar, Thanesar, District Kurukshetra and, as such, order dated 30.12.2022 passed by the trial court for issuance of proclamation against the petitioner by recording satisfaction that the petitioner was absconding or was concealing himself to avoid the service of the said warrant, particularly, in view of the reports given by the process serving agency to the effect that house number and name of father of petitioner was not mentioned properly, was totally uncalled for and against the record as well as in violation of the spirit of Section 82 Cr.P.C. Since, Section 82 Cr.P.C. regulates the liberty of an individual, therefore, it has to be strictly construed and no individual can be proceeded against under the same in a casual manner.

9. More than that, the petitioner has already entered into a settlement with complainant-respondent No.1 and based thereupon, complaint under Section 138 of the 1881 Act already stands withdrawn.

10. In view of the discussion made herein above as well as settlement arrived at between the parties, the present petition is allowed. Order dated 27.02.2023, passed by the court of Judicial Magistrate Ist Class, Chandigarh, declaring the petitioner as proclaimed offender as well as all subsequent proceedings arising therefrom, is hereby quashed.

11. The aforesaid order is subject to payment of cost of Rs.2000/- to be deposited with the Punjab and Haryana High Court Bar Clerk Association, within a period of 2 weeks from today.

CRM-M-29174-2023

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(HARKESH MANUJA)
JUDGE

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