

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

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CRM-M-28388-2023 (O&M)

Date of decision: 06.07.2023

Madhukar Tulsi

....Petitioner

Versus

State of UT Chandigarh and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Jigyasa Tanwar, Advocate for the petitioner

Mr. A.M. Punchhi, PP for U.T. Chandigarh

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 CrPC for quashing of the impugned order dated 20.09.2019 (Annexure P-1) passed by learned JMIC, Chandigarh vide which the petitioner has been declared proclaimed person in a complaint bearing No.NACT-13351-2018 dated 29.05.2018 titled as Lakhbir Singh vs. M/s IREO Fiveriver Pvt. Ltd. And Others filed by respondent No.2.

2. Learned counsel submits that the petitioner was never personally served with the summons/bailable warrants/non-bailable warrants as issued by the trial Court on account of the fact that the same were issued at the official address of the petitioner, which was closed as the company was under the control of the IRP, after the issuance of the Moratorium on 13.12.2018. He had, in fact already resigned from the Board of Directors of the Company before filing of the complaint and had no connection with the company and thus, was unaware of the pendency of the complaint and the proceedings thereof. The absence of the petitioner is neither wilful nor deliberate and on account of the reason aforesaid.

Further that he is ready and willing to join the proceedings and it is prayed that one opportunity may be granted to him to surrender before the learned trial Court even if the same is subject to costs. Reliance is placed on the orders of this Court in CRM-M-38277-2022 dated 26.08.2022, in the case of **Surjit Singh vs. State of Punjab**, CRM-M-39000-2022, titled as **Raghav vs. State of Punjab**, decided on 09.09.2022 and CRM-M-36490-2022, titled as **Major Singh vs. State of Punjab**, decided on 15.9.2022.

3. Notice of motion.

4. Mr. A.M. Punchhi, PP for U.T. Chandigarh, who has appeared on receipt of advance copy of the petition, opposes the same by submitting that the impugned order is legal and valid and has been rightly passed by the trial Court on account of non-appearance of the petitioner.

5. No order prejudicial to the rights of the private respondents is being proposed to be passed by this Court, thus, there is no requirement for the notice to be issued to them.

6. Heard.

7. The very purpose of initiation of proclamation proceedings, 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, the reasons for non-appearance of the petitioner that led to the passing of the impugned order, appear to be justified. At times, the accused can be prevented by sufficient reasons to put an appearance before the Court and such an absence cannot necessarily be construed as deliberate and wilful. However, it is incumbent upon him to join the proceedings, before the trial Court, for the culmination of the

same. Considering the fact that the absence of the petitioner was not wilful or deliberate and his readiness and willingness to surrender and join the proceedings, in case one opportunity is granted to the petitioner, no prejudice shall be caused to any of the parties, rather his joining the proceedings would help in expediting the trial. Thus, in order to make the ends of justice meet and finding judgments referred to above being applicable to the instant case, the present petition deserves to be allowed.

9. In view of the afore-referred orders and the facts and circumstances of the case, the impugned order dated 20.09.2019, Annexure P-1 is set aside subject to surrender by the petitioner before the trial Court on or before 04.08.2023 and depositing Rs.10,000/-. On furnishing bail/surety bonds, the trial Court shall release him on bail subject to its satisfaction. He is also directed to furnish an undertaking by way of an affidavit that he will appear on each and every date of hearing before the trial Court, unless specifically exempted by the Court. He shall not leave the country without prior permission of the Court. 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 does not adhere to the aforesaid, the present petition shall be deemed to have been dismissed without any reference to this Court.

(AMAN CHAUDHARY)
JUDGE

July 06, 2023

M.Kamra

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No