

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

(250)

**CRM-M-29911-2020 (O&M)
DATE OF DECISION:-24.04.2023**

Ram Pal

...Petitioner

vs.

State of Haryana and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ashit Malik, Advocate, for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

Mr. K. S. Dhanora, Advocate, for respondent No.2.

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 05.07.2019 passed by the Court of JMIC, Kurukshetra, whereby, petitioner was declared as proclaimed person apart from registration of FIR No.807 dated 07.08.2019 under Section 174-A IPC, registered at Police Station Thanesar City, District Kurukshetra.

(2) The facts leading to the present petition are that on account of dishonour of two cheques dated 05.02.2018 and 12.02.2018 amounting to Rs.2 Lakhs each, a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act") came to be filed at the instance of respondent No.2 wherein, the petitioner was summoned vide order dated 15.03.2018. Not having been served through the process of issuance of summons or even bailable/non-bailable

warrants, a proclamation under Section 82(1) Cr.P.C., was ordered to be effected against the petitioner on 03.05.2019 with 20.05.2019 being the date for putting appearance. On account of his non-appearance on the date fixed i.e 20.05.2019 as mentioned in the proclamation, the petitioner was declared as proclaimed person vide order dated 05.07.2019 passed by the learned JMIC, Kurukshetra and a direction was issued for registration of FIR under Section 174 A IPC against him.

(3) Later, on 06.11.2019 the petitioner was arrested by the “proclaimed offender staff” and was produced before the trial Court wherein he was granted concession of regular bail vide order dated 06.11.2019 passed by the Court of JMIC Kurukshetra.

(4) Referring to the service report submitted by the process serving agency on 29.10.2018, 20.02.2019 and 01.05.2019 which form part of the paper book as Annexure P-2 to Annexure P-4, learned counsel for the petitioner submits that petitioner had already left the house/address as mentioned in the complaint and thus, the proceedings 82 (1) Cr.P.C. could not have been ordered against him for effecting proclamation upon the same very address unless the fresh and correct address of the petitioner was submitted before the trial Court at the instance of complainant i.e. respondent No.2. He further submits that post grant of bail on 06.11.2019, the petitioner has continuously been appearing before the trial Court.

(5) On the other hand, learned counsel for respondent No.1 submits that the petitioner though has appeared before the trial Court on 06.10.2019, however, has been deliberately delaying the disposal of the

complaint.

(6) 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.

(7) A perusal of zimni orders passed by the trial Court post summoning order show that the house of the petitioner was found locked and even as per neighbours, the same was not found open since long. A perusal of the order dated 25.02.2019 even shows that the process serving agency asked for providing the second address of the petitioner for effecting service upon him, despite that without doing the needful, the proclamation was issued under Section 82(1) Cr.P.C. at the same very address. The trial Court failed to appreciate that Section 82 Cr.P.C. which forms part of the Chapter-VI of the Code of Criminal Procedure, governs the appearance of an individual who has been arrayed as an accused and thus regulates one's liberty and accordingly cannot be dealt with casually. Once the process serving agency having visited the spot time and again requested for providing the fresh/correct addresses of the petitioner for effecting service upon him, no proclamation under Section 82(1) Cr.P.C. could have been issued at the same very old address as mentioned in the complaint. More than that having produced before the trial Court on 06.11.2019 followed by grant of concession of bail, the petitioner has been regularly appearing and participating in the proceedings.

(8) Accordingly, the present petition is allowed, the impugned order dated 05.07.2019 (Annexure P-5) passed by the trial Court whereby, petitioner was declared as proclaimed person is hereby set

aside.

(9) In view thereof and coupled with the fact that petitioner has already joined the proceedings, no useful purpose is going to be served by continuing with the proceedings arising out of the FIR No.807 dated 07.08.2019 under Section 174A IPC, 1860, Police Station Thanesar City, District Kurukshetra, the same is thus, hereby quashed.

24.04.2023
anil

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned:
whether reportable:

Yes/No
Yes/No