

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32937-2023 (O&M)

Date of decision: 19.07.2023

Shinder Kaur

....Petitioner

versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. R.S.Athwal, Advocate for petitioner.

Mr. Dhruv Dayal, Additional A.G., Punjab.

ARUN MONGA, J. (ORAL)

Petition herein is for quashing of order dated 13.05.2022 (Annexure P-2) whereby learned Judicial Magistrate First Class, Anandpur Sahib, District Rupnagar declared the petitioner proclaimed offender in the proceedings arising out of criminal complaint under Section 138 of Negotiable Instrument Act, 1881.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Petitioner was appearing before learned trial Court in complaint case. Due to Covid-19, as per the directions of this Court, that there was no need to attend the proceedings of the case. After that due to unavoidable circumstances, the petitioner could not appear and remained absent. When she enquired about the proceedings of the case from her counsel then she was informed that learned trial Court has declared her proclaimed offender due to her non-appearance. She was summoned by way of non-bailable warrants of arrest. Proclamation under Section 82 Cr.P.C. was also issued and ultimately on 13.05.2022, petitioner was declared as proclaimed offender.

3. Learned counsel for petitioner contends that default in appearance was due to circumstances beyond control, as aforesaid and not at all intentional. Due to personal difficulty, the petitioner could not appear. However, without issuing any prior notice to the petitioner, learned trial Court without giving an opportunity of

being heard and then issued non-bailable warrants and declared her proclaimed offender. Resultantly, the impugned order dated 13.05.2022 (Annexure P-2) is unsustainable in law.

3.1 He submits that learned Magistrate failed to strictly follow the procedure prescribed under Section 82 of the Code of Criminal Procedure, 1973. In the present case, on 04.03.2022, petitioner was ordered to be served through proclamation for 25.03.2022. Therefore, 30 days' period had not elapsed from the date of publication. As per law, a period of at least thirty days should have been granted for appearance.

4. Learned State counsel, on advance service of petition, appears on behalf of respondent-State of Punjab and opposes the prayer made and submits that learned trial Court rightly declared her proclaimed offender as she herself chose not to appear.

5. Heard.

6. In the instant case, since the very purpose of initiating proceedings against petitioner under Section 82 Cr.P.C. was to ensure her presence before learned trial Court and petitioner is ready to give an undertaking before the Court that she will appear before the Court below as and when required, therefore, no useful purpose would be served to continue proceedings under Sections 82/83, *ibid*.

7. In the premise, impugned order dated 13.05.2022 (Annexure P-2) cannot be sustained and same is set aside. Petitioner be released on personal bond on her causing appearance before the Court below within three weeks from today, on furnishing bail bonds to its satisfaction. Petitioner shall join proceedings before learned Court below and shall continue to appear without default during pendency of trial. Additionally, in case her arrest is required to be caused, the petitioner shall be released on bail by the Arresting Officer, on furnishing adequate bail and surety bonds to his/her satisfaction.

8. However, it is made clear that any observations and/or submissions noted herein above shall not have any effect on merits of the case as the same are for

the limited purpose of hearing the instant petition alone and learned Court below shall proceed without being influenced with this order.

- 9. Petition is accordingly disposed of.
- 10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

19.07.2023
Vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No