

2023:PHHC:069952

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No. 246(12)

CRM-M-40364-2022

Date of decision : 15.05.2023

Vinod Shewag

..... Petitioner

VERSUS

Shree Naina Plastics Inc

..... Respondent

CRM-M-40382-2022

Vishnoo Mittal

..... Petitioner

VERSUS

Shree Naina Plastics Inc

..... Respondent

CRM-M-40387-2022

Heavent Sudhir Malhotra

..... Petitioner

VERSUS

Shree Naina Plastics Inc

..... Respondent

CRM-M-12860-2023

Vishnoo Mittal and others

..... Petitioners

VERSUS

Shree Naina Plastics Inc

..... Respondent

CRM-M-12872-2023

Vishnoo Mittal and others

..... Petitioners

VERSUS

Shree Naina Plastics Inc

..... Respondent

CRM-M-12946-2023

Vishnoo Mittal and others

..... Petitioners

VERSUS

Shree Naina Plastics Inc

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Sumeet Goel, Senior Advocate, with
 Mr.Ajay Kalra, Advocate, for the petitioner(s).

 Mr.Suman Jain, Advocate, and
 Mr.Rishabh Jain, Advocate, for the respondent(s).

DEEPAK SIBAL, J. (ORAL)

(1) A bunch of above referred six petitions is being decided by a common order as the issues involved therein are the same. For the sake of convenience, facts are being taken from CRM-M-40364-2022.

(2) Through the present petition filed under Section 482 Cr.P.C. the petitioner seeks quashing of order dated 28.07.2022 passed by the Judicial Magistrate Ist Class, Chandigarh (for short, the Magistrate) through which the petitioner has been declared a proclaimed person.

(3) The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that on 29.09.2018 the respondent/complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act). As per the complainant a cheque for Rs.1 crore issued by M/s Xalta Food and Beverages Pvt. Ltd. (for short, the company) had been dishonoured on presentation. Amongst others, the petitioner being the director/authorized signatory of the company, was arrayed as one of the accused. After recording preliminary evidence, the Magistrate, through order dated 01.10.2018, issued summons to the company and other accused including the petitioner. For several dates the petitioner could not be served. On 12.06.2019, after judging the petitioner's conduct, the Magistrate

formed an opinion that the petitioner was avoiding execution of the warrants. Therefore, proceedings under Section 82 Cr.P.C. were initiated to declare the petitioner to be a proclaimed person. Thereafter, on 11.07.2019, the petitioner, alongwith his counsel, appeared before the Magistrate and was granted bail. As per the conditions for the grant of bail the petitioner was required to furnish bail bonds in the sum of Rs.10 lakhs with one surety in the like amount. On 11.07.2019 itself the petitioner submitted before the Magistrate that for that day only his personal bonds be accepted and that he shall furnish his bail bonds and submit the surety on the next date of hearing which request of his was accepted. However, on 22.07.2019 the petitioner appeared before the Magistrate to state that he would furnish bail bonds and surety on the next date of hearing which request of his was also accepted. The next effective date of hearing was 25.09.2019 on which date the petitioner sought and got exemption from his personal appearance. The petitioner continued to be exempted from personal appearance on the next three dates of hearing i.e. 18.10.2019, 20.12.2019 and 10.02.2020. The next date of hearing after 10.02.2020 was 20.02.2020 on which date the Magistrate granted the petitioner last opportunity to furnish his bail bonds and surety. On 20.02.2020 learned counsel appearing for the petitioner stated before the Magistrate that vide order dated 17.02.2020 the proceedings before the Magistrate had been stayed by the Additional Sessions Judge, Chandigarh. While adjourning the matter to 09.03.2020 the Magistrate directed learned counsel for the petitioner to produce the order dated 17.02.2020 passed by the Additional Sessions Judge, Chandigarh but on 09.03.2020 neither the petitioner nor his counsel appeared before the Magistrate. Thereafter, on account of outbreak of the pandemic-COVID-19 the

matter was repeatedly adjourned and was effectively taken up by the Magistrate on 23.02.2021 on which date again neither the petitioner nor his counsel appeared. Thereafter due to the resurgence of the pandemic-COVID-19 the matter was adjourned and effectively taken up by the Magistrate on 06.08.2021 on which date also neither the petitioner nor his counsel put in appearance. The petitioner's and his counsel's absence continued on the next dates of hearing i.e. 02.09.2021 and 24.09.2021. On 21.10.2021 the Magistrate adjourned the proceedings as through order dated 07.11.2019 the Additional Sessions Judge, Chandigarh had stayed the proceedings. On 21.10.2021 the Magistrate further referred to an order of this Court dated 22.09.2021 passed in CRM-M-47600-2019 whereby this Court had reduced the amounts in the bail and surety bonds required to be furnished by the petitioner from Rs.10 lakhs to Rs.2 lakhs with a further direction to the petitioner to furnish the same within one week. However, on 21.10.2021 neither the petitioner nor his counsel appeared before the Magistrate. The position with regard to non-appearance before the Magistrate by both the petitioner and his counsel continued on 15.11.2021, 19.01.2022, 31.01.2022, 11.02.2022, 03.03.2022 and 12.04.2022. On all the aforesaid dates the Magistrate sought to procure the petitioner's presence through issuance of bailable/non-bailable warrants but without success. When the Magistrate was convinced that the petitioner was absconding and had also violated the terms of his bail by his consistent non-appearance as also by having not furnished the required bail/surety bonds, through order dated 12.04.2022, ordered cancellation of the petitioner's bail. Thereafter, through subsequent orders dated 24.03.2022, 23.05.2022 and 01.07.2022 the petitioner's presence was sought to be procured by the Magistrate but to no

avail.

(4) It is in the afore circumstances, through order of the Magistrate dated 23.05.2022, proceedings under Section 82 Cr.P.C. were initiated against the petitioner. In these proceedings the petitioner was served on 13.06.2022 and therefore on the next date of hearing i.e. 01.07.2022 the Magistrate adjourned the matter to 14.07.2022 giving the petitioner 30 clear days from the date of his service to put in appearance. On 14.07.2022 the petitioner appeared before the Magistrate through his counsel and sought exemption from personal appearance which request of his was rejected resulting in the issuance of directions to the petitioner to appear in person on 25.07.2022. However, on 25.07.2022 neither the petitioner nor his counsel appeared before the Magistrate resulting in the petitioner being declared a proclaimed person.

(5) In the meantime, the revision petition filed by the petitioner against the summoning order was dismissed in default by the Additional Sessions Judge, Chandigarh on 04.01.2022.

(6) Learned senior counsel appearing for the petitioner submits that before declaring the petitioner a proclaimed person he was served on 13.06.2022. The next date of hearing before the Magistrate was 01.07.2022. Thus, thirty clear days were not given to the petitioner from the date of his service till the date he was required to put in appearance before the trial court and therefore, the impugned order dated 28.07.2022 declaring the petitioner to be a proclaimed person is illegal. It was further submitted that prior to declaring the petitioner to be a proclaimed person the petitioner had put in appearance before the Magistrate through his counsel and therefore through a subsequent order the Magistrate could have not declared the petitioner to be a

proclaimed person and that the petitioner is still ready and willing to appear before the Magistrate.

(7) Learned senior counsel for the petitioner has been heard and with his able assistance the record of the case has also been perused.

(8) Over 4 ½ years ago the respondent filed a complaint under Section 138 of the Act in which the petitioner was one of the accused. In such complaint, through order of the Magistrate dated 01.10.2018, the petitioner was summoned to face trial. However, even after issuance of bailable warrants the petitioner's presence could not be secured. Therefore, the Magistrate initiated proceedings to declare the petitioner to be a proclaimed person. It is only thereafter that the petitioner put in appearance on 11.07.2019 on which date he was granted bail which was subject to the petitioner furnishing bail bonds in the sum of Rs.10 lakhs with one surety in the like amount. The petitioner requested the Magistrate to permit him for that day only to submit his personal bonds and undertook to furnish the required bail bonds and surety bonds on the next date of hearing. The Magistrate allowed the petitioner's request. However, on the next date of hearing also the petitioner stated before the Magistrate that for that date as well he be permitted to be released on furnishing of personal bonds and that he shall furnish the required bail bonds and surety bonds on the next date of hearing which request of his was also allowed with a direction to the petitioner to arrange the required bail bonds and surety bonds by the next date of hearing which was 23.08.2019.

(9) It has been nearly four years thereafter and the petitioner has not furnished the required bail/surety bonds.

(10) In the meanwhile, the petitioner alongwith his co-accused, had

knocked the doors of this Court through CRM-M-47600-2019 seeking therein reduction in the amount of bail/surety bonds. Through order dated 22.09.2021, this Court had reduced the amount from Rs.10 lakhs to Rs.2 lakhs. As per the order of this Court the petitioner was to furnish the bail/surety bonds within 07 days of the order but even after over one year and eight months the petitioner has not bothered to do the needful. Thus, for not months but years has the petitioner played truant with the Court and has also made false statements to procure favourable orders.

(11) The afore conduct of the petitioner continued even before he was declared a proclaimed person through the impugned order dated 28.07.2022 as he was served in such proceedings on 13.06.2022 but continued to remain absent from the proceedings on 14.07.2022 as also on 28.07.2022 i.e. the date on which he was declared a proclaimed person and this is in spite of the fact that on 14.07.2022 his counsel had been specifically directed by the Magistrate to ensure the petitioner's presence on the adjourned date.

(12) The argument raised on behalf of the petitioner that the impugned order deserves to be set aside on the ground that between the date of service in the proclamation proceedings and the next date before the Magistrate the petitioner was not given 30 clear days also needs to be considered and rejected.

Section 82(1) Cr.P.C. reads as under: -

"If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation."

(emphasis supplied)

(13) As per the afore quoted provision, the Court may publish a written

publication requiring an accused to appear at a specified place and at a specified time not less than thirty days from the date of publishing of such proclamation. The requirement of 30 days is from the date of publishing of the proclamation proceedings.

(14) In the case in hand through order dated 23.05.2022 the Magistrate had initiated proclamation proceedings to declare the petitioner a proclaimed person. The next date in such proceedings was 01.07.2022. At the time of passing of the order dated 23.05.2022 the Magistrate had ordered the next listing of the matter beyond 30 days. On 23.05.2022 the Magistrate was not aware as to on which date would the petitioner be actually served. Therefore, in terms of the requirement in Section 82 Cr.P.C., at the time of issuance of proclamation on 23.05.2022 the only precaution that the Magistrate could have taken was to keep the next date of hearing beyond 30 days which he did. Since the proclamation was actually executed upon the petitioner on 13.06.2022, to await the petitioner's presence and as an abundant precaution, the Magistrate further adjourned the matter from 01.07.2022 to 14.07.2022. However, in spite of having been served on 13.06.2022 neither on 01.07.2022 nor on 14.07.2022 did the petitioner put in appearance before the Magistrate. However, his counsel appeared on 14.07.2022. Exemption from the petitioner's personal appearance was sought which request of his was rightly rejected. The petitioner's counsel was directed to produce the petitioner on 25.07.2022 on which date, showing scant regard for the Court neither the petitioner nor his counsel appeared before the Magistrate leaving no option with the Magistrate but to declare the petitioner to be a proclaimed person.

(15) In the afore peculiar facts no fault is found in declaring the

petitioner to be a proclaimed person.

(16) Dismissed.

15.05.2023
shamsher

[DEEPAK SIBAL]
JUDGE

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