

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

265

CRM-M-38583-2022 (O&M)
Date of decision: 13.09.2023

Sewa Dass

...Petitioner

Versus

Sunil Kumar and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. J.S. Virk and Mr. A.S. Virk, Advocates for the petitioner

Mr. Varshit Garg, Advocate for respondent No.1

Mr. Dhruv Sihag, AAG Haryana

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 CrPC for quashing of the PO order dated 05.01.2022 (Annexure P-4) in complaint instituted on 29.08.2018 NIA-1670-2018 titled as 'Sunil Kumar versus Sewa Dass' in the Court of Judicial Magistrate 1st Class, Jagadhri under Section 138 of NI Act.

2. Learned counsel submits that the petitioner was not served in the complaint filed under Section 138 NI Act on account of the fact that he was not residing at his village, but at House No.1538, Sector-4, Kurukshetra along with his family. An affidavit of Namberdar of the village has been relied upon in that regard to substantiate the submission. It is only, when FIR dated 22.06.2022, under Section 174-A IPC was registered against him, he became aware of these proceedings. The petitioner was ready and willing to pay an amount of Rs.60,000/-, which was the amount of dishonoured cheque. The draft of

Rs.60,000/- in the name of complainant-Sunil Kumar, is appended with this petition as Annexure P-10 and pursuant to order dated 29.08.2022 passed in this Court, he had surrendered before the trial Court on 14.09.2022 and furnished the said draft, which was deposited before the trial Court at Yamunanagar on the same day and interim bail was granted to him. The has no objection if the said amount of Rs.60,000/- is released to the complainant. Copy of the order dated 14.09.2022 passed by the trial Court showing the deposit the above amount by way of draft, has been produced in Court. In CRM-M-38583-2022 filed for quashing of complaint, respondent No.2 has made a statement for referring the matter to for purpose of determining the compensation to be paid, to the Mediation and Conciliation Centre at Yamunanagar and by an order of even date, the parties have been directed to appear before the said Centre on 25.09.2023.

3. Learned State counsel affirms the factum of the petitioner having surrendered before the trial Court and being admitted to interim bail.

4. Learned counsel for the complainant has no objection, if the impugned order is set aside and prays that the amount of Rs.60,000/- released to him as has been stated by learned counsel for the petitioner. However, for the amount of compensation, the parties be referred to Mediation at Yamuna Nagar.

5. Heard.

6. 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.

7. 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. It was incumbent upon him to join the proceedings, before the trial Court, for the culmination of the same. The petitioner had surrendered before the trial Court, in compliance of the order dated 29.08.2022 passed by this Court and also deposited an amount of Rs.60,000/- involved in the case, which he has offered to be released to the complainant. Thus, 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.

8. In view of the facts and circumstances of the case, the impugned order dated 05.01.2022, Annexure P-4 passed by the Judicial Magistrate 1st Class, Jagadhri is hereby set aside. The amount of Rs.60,000/- as deposited before the trial Court be released to the complainant-respondent No.2 forthwith.

9. Disposed of accordingly.

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

September 13, 2023
M.Kamra

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