

CRM-M-40573-2023
Date of Decision: 18.08.2023

M/s Lord Shiva Construction Co. Pvt. Ltd. and another Petitioners

State of U.T. Chandigarh and another Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Ankit Grewal, Advocate,
for the petitioners.

RAJBIR SEHRAWAT, J. (ORAL)

1. The present petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of the impugned order dated 21.09.2022, whereby the non-bailable warrants have been issued against petitioner No.2; impugned order dated 01.12.2022, vide which, proclamation proceedings under Section 82 Cr.P.C. have been initiated against him; and impugned order dated 20.04.2023, whereby petitioner No.2 has been declared as a proclaimed person by the court of Judicial Magistrate Ist Class, Chandigarh, in a complaint case No.NACT/164/2020 titled as 'Tata Motors Finance Limited Vs. Lord Shiva Construction Co. Ltd. and another'

2. It is submitted by the learned counsel for the petitioners that petitioner No.2 could not appear before the Trial Court in a complaint case registered under Section 138 of the Negotiable Instruments Act, because he was not aware of the pendency of the said case. During the proceedings, the

notice was sent on a wrong address. The registered address of the petitioner-company is already available on the record of the Registrar of Companies, despite that, respondent No.2/complainant had got service effected on a wrong address. As a result thereof, the Trial Court, vide order dated 21.09.2022, had issued the non-bailable warrants against petitioner No.2. Thereafter, he was declared as a proclaimed person, vide order dated 20.04.2023. The absence of petitioner No.2 from the court proceedings was not intentional. The petitioner is not intending to avoid the process of Court. Rather, he undertakes to appear before the Trial Court regularly. Hence, petitioner No.2 deserves to be protected against his arrest.

3. Notice of motion.

4. On the asking of the Court, Mr. Sidakmeet Singh Sandhu, Additional Public Prosecutor, U.T., Chandigarh, accepts notice on behalf of respondent No.1. He submits that although the petitioner does not deserve the concession of bail because he had earlier absconded from the process of law, however, respondent No.1 has no objection, if the petitioner appears before the Trial Court.

5. The objective of the coercive mechanism prescribed under the Code of Criminal Procedure is to ensure that the accused remain present before the Court to receive the orders and punishments as are passed qua the accused. If the accused shows his sincere intention and desire to appear before the Court, then it would not be unjustified to protect him from being arrested.

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6. In view of the above, the present petition is allowed and the impugned orders dated 21.09.2022, 01.12.2022 and 20.04.2023 passed by the court of Judicial Magistrate Ist Class, Chandigarh, are quashed, subject to petitioner No.2 appearing before the Trial Court on or before 06.09.2023. It is further directed that in case petitioner No.2 so appears before the Trial Court on or before 06.09.2023, then he shall be released on bail on his furnishing bail bonds/sureties to the satisfaction of the Trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

(RAJBIR SEHRAWAT)
JUDGE

18.08.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No