

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

206.

CRM-M No.40558 of 2023

Date of Decision:16.11.2023

Munish Gupta

...Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jigyasa Tanwar, Advocate
for the petitioner.

Ms. Navreet Kaur Barnala, AAG, Punjab.

Mr. Saurabh Singh, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court under Section 482 Cr.P.C. seeking quashing of FIR No.168 dated 18.07.2023 registered under Section 174-A IPC at Police Division No.5, Ludhiana (Annexure P-1) as well as order dated 24.10.2019 (Annexure P-3) passed by the learned Judicial Magistrate Class 1st Class, Ludhiana in NACT No.12293 of 2017 titled as *Amarjit Singh Vs. M/s Sara International and another* whereby the petitioner has been declared a proclaimed person.

2. Learned counsel appearing for the petitioner, *inter alia*, contends that a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act) was filed against the petitioner herein at the instance of respondent No.2-complainant on the ground that the petitioner herein had purchased cycle parts from the complainant vide invoice No.0751

dated 01.04.2016 on credit and agreed to make the payment of said invoice within a period 30 days. However, when the petitioner herein failed to make the payment within the stipulated period, repeated requests were made to the petitioner to clear the dues but to no avail. Ultimately, the petitioner issued cheque bearing No.918512 dated 09.05.2017 for an amount of ₹9,27,938/- drawn on Punjab & Sid Bank, Miller Ganj, Gill Road, Ludhiana with the assurance that the same will be encashed on presentation. However, when the said cheque was presented for encashment, it was dishonoured vide memo dated 01.08.2017 with the remarks 'Account Closed'. The complainant served the legal notice dated 31.08.2017 vide registered A.D. upon the petitioner to discharge his credit liability but the same was not responded to by the petitioner and therefore, having left with no other option, complaint under Section 138 of the NI Act was made by the complainant against the petitioner. In the said complaint, vide impugned order dated 24.10.2019, petitioner herein has been declared a proclaimed person.

3. Learned counsel appearing for the petitioner submits that the impugned order is liable to be set aside on the sole ground that the complaint under Section 138 of the NI Act against M/s Saara International through its proprietor and one Sumit Gupta, being proprietor of Saara International and the petitioner herein namely Munish Gupta was not even arrayed as accused therein. Since the complaint was filed against Sumit Gupta whereas name of the petitioner herein is Munish Gupta, therefore, the petitioner herein was never served in the proceedings under Section 138 of the NI Act. To substantiate his contention, he relies upon the zimni orders (Annexure P-4). It is further contended that it was the Sumit Gupta, who was declared a proclaimed person and not the petitioner herein by the trial Court without following the mandate of Section 82

Cr.P.C. It is also contended that the respondent No.2-complainant had approached this Court by way of CRM-M No.45446 of 2022 arraying the petitioner herein as Sumit Gupta @ Munish Gupta whereas the complaint was filed against Sumit Gupta, seeking a direction to the official respondents therein to arrest the petitioner, who had been declared proclaimed person. On the directions of this Court, an enquiry was conducted by the police wherein it came forth that name of the petitioner as per his aadhaar card is Munish Gupta and not Sumit Gupta. In fact, respondent No.2-complainant had filed another complaint case bearing No.12292 of 2017 under Section 138 of the NI Act against the wife of the petitioner wherein they are regularly appearing. In fact, the respondent No.2-complainant did not appear before the investigating officer despite being called repeatedly. In support of his contention, he relies upon the report of ASI Sukhpal, Investigating Officer, which is attached with the present petition as Annexure P-5. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

4. Per contra, Ms. Navreet Kaur Barnala, AAG, Punjab supports the impugned order passed by the trial Court by contending that the petitioner did not put in appearance before the trial Court intentionally and deliberately and therefore, having left with no other option, proclamation was issued to secure his presence. When the petitioner did not turn up despite execution of proclamation, he was declared a proclaimed person and proceedings under Section 174A IPC were initiated against him.

6. At this stage, Mr. Saurabh Singh, Advocate has put in appearance on behalf of respondent No.2 and files his memorandum of appearance. He submits that despite having knowledge of proceedings pending against the petitioner herein before the trial Court under Section 138 NI Act, he

deliberately and willfully did not appear and therefore, the impugned order dated 24.10.2019 passed by the trial Court does not warrant any interference.

7. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

8. While the scheme of criminal justice system necessitates curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

9. A perusal of the complaint (Annexure P-2) reveals that one Sumit Gupta was arrayed as accused No.2 in the said complaint whereas name of the petitioner is Munish Gupta. Furthermore, a perusal of zimni orders (Annexure P-4) reveals that summons issued to the petitioner through ordinary as well as RC/AD process, were received back unserved for the probable reason that the same were issued in wrong name. Even the bailable and non-bailable warrants were not received back. A perusal of the impugned order passed by the trial Court merely indicates that proclamation through publication issued against accused received back duly effected, *sans* assigning reasons or recording its satisfaction that the petitioner is absconding or concealing himself intentionally to avoid the process of law. Further, in the status report dated 16.11.2023 filed in the form of an affidavit of Jasroop Kaur Batth (IPS), ACP, Civil Lines, Ludhiana, District Police Commissionerate, Ludhiana on behalf of respondent No.1, it is stated that after passing of the order dated 24.10.2019 declaring Sumit Gupta a proclaimed person, the

complainant-respondent No.2 sworn an affidavit before the investigating agency that alias name of Sumit Gupta is Munish Gupta. Moreover, in another complaint filed by the complainant under Section 138 NI Act against the wife of the petitioner, regular appearance is being caused. This Court in the judgment passed in ***Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506*** has held that the Court is first required to record its satisfaction before issuance of process under Section 82 Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in ***Sonu vs. State of Haryana 2021 (1) RCR (Cri.) 319***, it has been held that the conditions specified in Section 82 (2) Cr.P.C. for the publication of a proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation as nullity. Once the impugned order passed under Section 82 Cr.P.C. is found to be suffering from incurable illegality, the FIR registered on the basis of the same under Section 174A IPC would not survive either.

10. The sole purpose of issuance of non-bailable warrants or issuance of proclamation is to secure presence of the accused before the trial Court. The petitioner in the present case has himself come forward and has undertaken to appear before the trial Court on each and every date.

11. In view of the aforesaid facts and circumstances, the impugned order dated 24.10.2019 (Annexure P-3) vide which the petitioner was declared proclaimed person is set aside and FIR No.168 dated 18.07.2023 registered under Section 174A IPC at Police Station Division No.5, Ludhiana is quashed. The petitioner is directed to appear before the trial Court on or before 02.12.2023 and on his doing so, he shall be admitted to bail on his furnishing

bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of ₹10,000/- to be deposited with the District Legal Services Authority, Ludhiana for wasting precious time of the Court.

12. The instant petition stands disposed of in above terms.

(HARPREET SINGH BRAR)
JUDGE

November 16, 2023
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No