

CRM-M-42714-2022

Date of Decision: February 15, 2023

SUKHDEV SINGH

..... Petitioner

Versus**STATE OF HARYANA AND ANOTHER**

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Naresh Kaushik, Advocate for the petitioner.

Mr. Rakesh Kumar Ambavta, Addl. A.G., Haryana.

HARKESH MANUJA, J. (ORAL)

As per the office report, respondent No.2 stands served, however, no one appears on his behalf.

By way of present petition filed under Section 482 CrPC, prayer has been made for setting aside the order dated 22.02.2022 and 18.08.2022 whereby the petitioner was declared as proclaimed person followed by issuance of directions as regards registration of FIR under Section 174-A of the IPC against him.

The facts of the case are that on account of dishonour of cheque bearing No.052783 dated 01.07.2020, a complaint under Section 138 of Negotiable Instruments Act, 1881 came to be filed against the petitioner at the instance of respondent No.2 wherein the petitioner was summoned vide order dated 12.01.2021.

On account of his non-appearance before trial Court, the petitioner was declared as proclaimed person vide order dated 22.02.2022 followed by another order dated 18.08.2022 whereby directions were

issued for registration of FIR under Section 174-A IPC against the petitioner.

The aforesaid two orders have been impugned by way of present petition while submitting that the non-appearance of the petitioner before the trial Court was wholly unintentional and on account of bona fide reasons as the petitioner is working as a cleaner on a transport vehicle and was away from his house at the relevant point of time, when the notices as issued by the trial Court were sought to be served upon him.

On 11.01.2023, this Court passed the following order:-

“On 19.09.2022, this Court passed the following order: “
The learned counsel for the petitioner has submitted that vide Annexure P-1 the petitioner has been declared as proclaimed person. He submitted that the petitioner was not present at the time when the proclamation was effected and his wife was at home who is an illiterate. He submitted that the subject matter of the present dispute is pertaining to Section 138 of the Negotiable Instruments Act, 1881 and the petitioner is ready and willing to surrender before the learned trial Court on the date already fixed i.e. 21.10.2022 and therefore has prayed that the order declaring him as a proclaimed person may be set aside.

Notice of motion.

Mr. Ranvir Singh Arya, learned Additional Advocate General, Haryana accepts notice on behalf of respondent No.1.

In view of the undertaking given by the learned counsel for the petitioner that he undertakes to appear before the learned trial Court, it is directed that the petitioner shall appear before the learned trial Court on 21.10.2022 which is date already fixed before the learned trial Court at 10.00 A.M. Till the time the petitioner surrenders before the learned trial Court, no coercive steps shall be taken against the petitioner. In case he files any application for bail, the same shall be considered and decided expeditiously and within 3 days in accordance with law.

Adjourned to 11.01.2023.”

Learned counsel for the petitioner submits that on account of some unavoidable circumstances, petitioner could not appear before the trial Court within the time granted by this Court and undertakes to appear before the trial Court within a period of 10 days from today and shall furnish his fresh bail/surety bonds.

Considering the facts the circumstances of the present case, interim protection granted in favour of petitioner vide order dated 19.09.2022 is extended for another 15 days from today. Let the petitioner appear before the trial Court and the trial Court shall accept the bail/surety bonds submitted by the petitioner. Learned counsel for the petitioner also undertakes to file process fee for

effecting the service upon respondent No.2. However, the aforesaid order shall be subject to deposit of a sum of Rs.5,000/- by the petitioner within a period of two weeks from today in the following account :

Account Name-Punjab and Haryana High Court
Association Lawyer's Family Welfare Fund.
Account No. 41564846387.
Bank Name. SBI High Court Branch.

Adjourned to 15.02.2023."

Today, learned counsel for the petitioner has informed that in pursuance to aforesaid order dated 11.01.2023, the petitioner has already submitted to the jurisdiction of the trial Court and has already submitted his bail bonds/surety bonds as ordered, besides having deposited the cost imposed upon him and thus prays for setting aside of the impugned orders dated 22.02.2022 and 18.08.2022.

On the other hand, as already stated herein-above that respondent No.2 despite service has chosen not to appear, whereas, on behalf of respondent No.1, learned State counsel vehemently opposes the prayer made in the present petition while submitting that the non-appearance of petitioner before trial Court was wholly intentional with an idea to delay the proceedings pending against him despite having due knowledge.

I have heard learned counsel for the parties and have gone through the paper-book. I find substance in the submissions made on behalf of the petitioner.

The petitioner having already submitted to the jurisdiction of trial Court in the proceedings arising out of complaint filed under Section 138 of Negotiable Instruments Act, no useful purpose is going to be served by continuing with the proceedings arising out of FIR recorded under Section 174-A of the IPC against him as the primary objective of Section 82

CrPC being to procure the presence of an individual so as to make him available for the purpose of facing the proceedings initiated against him already stands achieved.

In view of the law laid down by this Court passed in **CRM-M-16449-2018**, titled as **“Satish Kumar vs. State of Haryana and another”** and **CRM-M-30911-2021**, titled as **“Ram Kumar Rana vs. State of Haryana and another”** the instant petition is allowed. Orders dated 22.02.2022 and 18.08.2022 are hereby quashed.

15.02.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>