

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-43793-2022
Date of decision: 09.01.2023

Sudesh Rani and others

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Kanika Ahuja, Advocate for the petitioners.

Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 482 Cr.P.C. for quashing of the order dated 28.02.2017 and 30.05.2017, Annexure P-1 and P-2 respectively, passed by learned Judicial Magistrate 1st Class, Karnal whereby the petitioners have been declare as proclaimed persons and also quashing of FIR No. 333 dated 13.08.2022, registered under Sections 174-A IPC at Police Station Butana, District Karnal.

Learned counsel for the petitioners contends that complaint under Section 138 of the Negotiable Instruments Act, 1881 was instituted against the petitioners, the notice of which was never served upon them, hence, the absence of the petitioners in the proceedings was neither willful nor deliberate. However, the petitioner No. 1 was declared proclaimed person vide Annexure P-1 dated 28.02.2017 and petitioner No. 2 vide order

dated 30.05.2017 (Annexure P-2), consequent to which after 5 years, FIR No. 0333 dated 13.08.2022 under Section 174-A IPC was lodged. It is thereupon that the petitioners became aware that the proceedings were pending and that the petitioners had been declared proclaimed persons. There was no deliberate avoidance of the summons. The petitioners had neither concealed themselves nor absconded to avoid the service of summons /notice issued by the learned trial Court. The learned Magistrate had not subjectively satisfied himself with regard to the aforesaid, to arrive at conclusion (reason to believe) that occurs in Section 82 Cr.P.C. The proclamation notice was issued on 11.01.2017 and allegedly when police went to paste the same at the house, the same was found closed on 20.01.2017. The proclamation was not even read publicly at a conspicuous place in the town in which the petitioners were said to be residing. To buttress her submission, she places reliance on the judgments of this Court in **Gurbir Singh Mundi vs. State of Punjab and another** CRM-M-49283-2021, decided on 16.12.2021, However, reference has been made to averments made in para 12 of the petition that the petitioners are ready to settle the dispute with the complainant-respondent No. 2. The aforesaid was the submission made at the time of notice of motion as well and to show the bona fide, it was stated that they were ready to deposit Rs.2,00,000/- before the trial Court. Learned counsel for the petitioners further submits that in pursuance of the order dated 21.09.2022, the petitioners had surrendered before the trial Court on 07.10.2022 and had also deposited an amount of

Rs.2,00,000/- which was deposited in the account of complainant as has been recorded in the order of the said date passed by the trial Court, which has been placed on record as Mark-A. It is further submitted that the petitioners had been released on bail by the trial Court. She submits that the petitioners shall furnish an undertaking before the trial Court that the petitioners shall continue to appear before the trial Court on each and every date of hearing. The said affidavit be filed on or before the next date of hearing.

On the other hand, learned State counsel submits that the impugned order has rightly been passed on account of non appearance of the petitioners.

Heard.

In the case of **Gurbir Singh Mundi** (supra), it was held that provisions of Section 82(2) Cr.PC. are to be mandatorily complied with cumulatively and not alternatively. The Court had quashed the order declaring the petitioners therein as proclaimed persons on the ground that declaration was not read publicly in some conspicuous place of town or village, in which the accused ordinarily resides.

Adverting to the facts of the present case inasmuch the petitioners were never served, thus could not appear before the trial Court, which appears to be justified explanation of absence. At times, the accused can be prevented by sufficient reasons such as no effecting of service as in the present case, to put an appearance before the Court, as such absence

cannot necessarily be construed as deliberate and willful. However, it is incumbent upon them to join the proceedings, before the trial Court, for the culmination of the same. Thus, in order to make the ends of justice meet keeping in view the facts and circumstances of this case that the petitioners had joined the proceedings in compliance of the order passed by this Court and the judgment referred to hereinabove being applicable to the instant case, the present petition deserves to be allowed.

Accordingly, the impugned orders dated 28.02.2017 and 30.05.2017 (Annexure P-1 and P-2 respectively) are set aside and consequential FIR No.333 dated 13.08.2022, registered under Section 174A is quashed.

(AMAN CHAUDHARY)
JUDGE

January 09, 2023

Mehak/S.Sharma

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