

CRM-M-45124-2022

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(205)

CRM-M-45124-2022

Date of decision:- 24.08.2023

Rachit Bansal

... Petitioner

Versus

Rulda Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Manoj Sharma, Advocate for
Mr. Ritesh Pandey, Advocate
for the petitioner.

None for the respondent.

SUVIR SEHGAL, J. (ORAL)

1. Counsel for the petitioner submits that on the basis of a cheque, which was lying with the respondent as surety for a loan, petitioner has been made as an accused in a complaint instituted under Section 138 of the Negotiable Instruments Act, 1881 and has been summoned as an accused. Counsel submits that the petitioner appeared before the Trial Court and was released on bail on furnishing bail and surety bonds. He submits that due to his non-appearance, he has been declared as a proclaimed person by order dated 05.09.2022, which has been impugned herein. Counsel submits that the petitioner is prepared to appear before the Trial Court and join the proceedings.
2. Notice of the petition was issued to the respondent, who has been served, but there is no appearance on his behalf.

3. Heard counsel for the petitioner.
4. On 28.09.2022, this Court passed the following order:-

“The petitioner assails order dated 5.9.2022 (Annexure P-3) passed by learned Additional Chief Judicial Magistrate, Gurdaspur vide which the petitioner has been declared a proclaimed person.

Learned counsel for the petitioner submits that in the instant case the requisite provisions of Section 82 Cr.P.C. have not been complied with in letter and spirit inasmuch a clear period of 30 days w.e.f. the date when proclamation was effected upto the date nominated for causing appearance in the Court as per proclamation notice, has not been afforded to the petitioner.

Learned counsel for the petitioner submits that in the present case, the trial Court ordered for issuance of proclamation on 12.07.2022 directing the petitioner to appear before the Court on 06.08.2022, which itself is a period less than 30 days. A perusal of order dated 06.08.2022 would indicate that upon receipt of report regarding effecting of proclamation, statement of serving Constable was recorded on the said date. However, since mandatory period of 30 days had not elapsed, the trial Court further adjourned to 05.09.2022 on which date, the petitioner was declared a proclaimed person. Learned counsel has further submitted that though the trial Court did adjourn the matter to 05.09.2022, but such like adjournment would not cure the defect, which had already crept in.

Learned counsel places reliance upon Ashok Kumar Vs. State of Haryana 2013(4) R.C.R. (Criminal) 550 and a recent judgment dated 16.7.2021 of this Court rendered in CRM-M-25088 of 2021 titled Anita Sharma Vs. State of Punjab, to contend that further adjournment of the matter, as has been done in the present case, for the purpose of computing the period of 30 days, cannot be construed as compliance of the mandatory provisions and that in these circumstances, the impugned order deserves to be set aside.

Notice of motion for 2.3.2023.

Meanwhile, operation of the impugned order dated 5.9.2022 (Annexure P-3) shall be kept in abeyance.”

5. While dealing with a similar situation, a Co-ordinate Bench of this Court in *Ashok Kumar’s* case (supra) has held that a clear notice of 30 days from the date of its publication, is mandatory and in its absence, Section 82 cannot be said to have been complied with. Counsel has made a submission that the petitioner is prepared to surrender before the learned Judicial Magistrate and join the proceedings. His bonafides deserves to be tested.

6. Consequently, impugned order dated 05.09.2022, Annexure P-3, passed by the Trial Court is set aside. Petitioner shall surrender before the Trial Court within a period of six weeks from today. In case, he does so, he shall be released on furnishing bail/surety bonds to its satisfaction. It is made clear that in case the petitioner fails to surrender within the time granted by this Court, instant petition shall be deemed to have been dismissed.

7. With the above direction, petition is disposed of.

(SUVIR SEHGAL)
JUDGE

24.08.2023
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No