

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

(128)

CRM-M-47119-2023
DATE OF DECISION:- 02.11.2023

SATISH KUMAR SIHAG**...PETITIONER****VERSUS****STATE OF HARYANA AND ANOTHER****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Ms. B.S.Mittal, Advocate for the petitioner.

SUVIR SEHGAL, J. (Oral)

1. By way of present petition filed under Section 482, Cr.P.C., petitioner has moved this Court for quashing of FIR No.305 dated 31.03.2023 lodged under Section 174-A, IPC, Annexure P-4, at Police Station Civil Lines, Sirsa as well as for quashing order dated 14.03.2023, Annexure P-3, whereby the petitioner has been declared a proclaimed person by the learned Judicial Magistrate, Sirsa.

2. A complaint was instituted against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short "the N.I. Act") for dishonor of cheque of Rs.80,000/-, wherein by impugned order, Annexure P-3, petitioner was declared as a proclaimed person. FIR, Annexure P-4, was registered as a consequence of the above order.

3. Counsel for the petitioner submits that the petitioner was summoned, but service could not be effected upon him and non-bailable warrants were issued, which were received back unexecuted. However, without recording proper satisfaction that the warrants cannot be executed, Trial Court by order dated 30.11.2022, Annexure P-2, initiated proceedings to declare the petitioner as an absconder. Counsel contends that the

procedure adopted by the Court is *de hors* the provision of Section 82, Cr.P.C. Still further, he submits that the dispute has been amicably settled, petitioner has paid back the amount of disputed cheque along with compensation and the complaint instituted by respondent No.2 has been withdrawn on 11.07.2023, Annexure P-3. He submits that the impugned order as well as the consequential FIR, therefore, deserves to be quashed.

4. Notice of motion.

5. On asking of the Court, Mr. Ramender Singh Chauhan, AAG, Haryana accepts notice on behalf of respondent No.1. Mr. Gagandeep Singh Sirphikh, Advocate puts in appearance and accepts notice on behalf of respondent No.2. He has filed his Vakalatnama, which is taken on record.

6. Counsel representing respondent No.2 has conceded that the disputed amount has been re-paid and submits that he does not have any objection in case the prayer made in the petition is acceded to.

7. I have considered the submissions made by counsel for the parties.

8. In *Smt. Anita Sharma Versus State of Punjab (CRM-M-25088-2021*, decided on 16.07.2021), this Court has held that prior issuance of a warrant of arrest by the Court is a sine qua non for issuance of publication of the proclamation and there must be a report before the Court that a person against whom warrant has been issued had absconded or has been concealing himself, for which reason the warrant of arrest could not be executed. It has been further held that proclamation cannot be issued as a matter of course and the Court must be prima facie satisfied that the person has absconded and is concealing himself.

9. An examination of the impugned order, Annexure P-3, shows that the Court has failed to record any such satisfaction, rather the Court has

given undue weightage to the long pendency of the complaint and has assumed that the accused-petitioner is aware of the pendency and is avoiding appearance. In this background, the Court proceeded to issue a proclamation against the accused-petitioner. The manner in which the proclamation has been issued by the Court does not meet the tests laid down by this Court in *Anita Sharma's* case (supra).

10. Not only this, the complaint instituted under Section 138 of the N.I. Act has been amicably settled, disputed amount along with compensation has been paid and the complaint has been withdrawn by the complainant-respondent No.2. In such a situation, the order declaring the petitioner as an absconder and the continuation of the proceedings in FIR under Section 174-A, IPC, lodged pursuant to order, Annexure P-3, is an abuse of the process of the Court. Reference in this regard will be made to the judgments of this Court in *Mircorquan Techno Limited and others Versus State of Haryana and another 2015 (32) R.C.R. (Criminal) 790; Rajneesh Khanna Versus State of Haryana another 2017 (3) L.A.R. 555, Madhu Wadhwa Versus State of Haryana and another 2019 4 R.C.R. (Criminal) 975; Surender Singh Versus State of Haryana and another, 2022 (2) R.C.R. (Criminal) 627 and Sher Singh Versus State of Haryana 2023 (1) R.C.R. (Criminal) 185.*

11. As a result of the above discussion, petition is allowed. Impugned order, Annexure P-3, as well as consequential FIR, Annexure P-4, along with all subsequent proceedings emanating therefrom are quashed. There shall be no order as to costs.

02.11.2023
Kamal

(SUVIR SEHGAL)
JUDGE

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