

CRM-M No.46233 of 2023 (O&M)

2023:PHHC:153066

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

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**CRM-M No.46233 of 2023 (O&M)
Date of Decision: 01.12.2023**

ANITA DEVI

.....Petitioner

Vs

STATE OF PUNJAB AND ANOTHER

....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. R.P. Dhir, Advocate
for the petitioner.

Mr. Gurlal Singh Dhillon, Asstt. A.G., Punjab.

None for respondent No.2.

HARKESH MANUJA, J. (Oral)

[1]. By way of present petition, prayer has been made for quashing of order dated 18.08.2023 passed by the Judicial Magistrate Ist Class, Hoshiarpur (Annexure P-1) in Complaint case No.NACT/715 dated 27.09.2019 titled 'Charanjit Singh vs. Anita Devi' under Section 138 of the Negotiable Instruments Act (hereinafter to be referred as 'the N.I. Act'), whereby the petitioner was declared as proclaimed offender.

[2]. While issuing notice of motion, following order was passed by the Co-ordinate Bench of this Court:-

“Learned counsel for the petitioner submits that no notice under Section 82 Cr.P.C. was served and the petitioner has wrongly been declared proclaimed offender.

Notice of motion.

Learned State Counsel appearing on advance notice accepts the same on behalf of the respondent/State.

In the meantime, let the petitioner surrender before the Court concerned within one week from today and apply for regular bail.

In eventuality of petitioner surrendering before the trial Court within one week from today and applying for regular bail, his application be decided by the Court concerned on the same day.

List on 30th November, 2023.

**(AVNEESH JHINGAN)
JUDGE**

15th September, 2023
Anuradha”

In pursuance thereof, the petitioner surrendered before the Trial Court and was granted regular bail vide order dated 19.09.2023.

[3]. Perusal of office report shows that notice could not be served upon respondent No.2 for want of filing of process fee. It may be noted that in the present case, challenge is made only to the order dated 18.08.2023, vide which the petitioner was declared as proclaimed offender and the same is in issue between the Court and petitioner only, therefore, service upon respondent No.2 may not be required at this stage.

[4]. In the present case, a complaint under Section 138 of the N.I. Act came to be filed against the petitioner, wherein she was summoned vide order dated 02.12.2022. On account of non-appearance of the petitioner, proclamation under Section 82 Cr.P.C. was ordered against her on 06.05.2023 for 01.07.2023, however the same could not be effected and as such, fresh order of proclamation was passed on 03.07.2023 for 18.08.2023.

[5]. As per record, the proclamation issued on 03.07.2023 was effected on 10.07.2023 followed by order dated 18.08.2023, whereby the petitioner was declared to be proclaimed offender on account of her non-appearance before the Trial Court.

[6]. Impugning the aforesaid order dated 18.08.2023, learned counsel for the petitioner submits that the address of the petitioner given in the complaint was incorrect and, therefore, the order declaring her proclaimed offender on the said address was totally wrong and illegal being in violation of Section 82 Cr.P.C.

[7]. Learned counsel further submits that in pursuance of the order dated 15.09.2023 passed by this Court, the petitioner even appeared before the Trial Court and was admitted to bail followed by continuous appearance in the proceedings.

[8]. On the other hand, the prayer made by the petitioner is vehemently opposed at the instance of learned State counsel while submitting that despite having knowledge about the pendency of complaint as well as the summoning order passed against the petitioner, she deliberately chose not to appear before the Trial Court and thus the order dated 18.08.2023 passed by the Trial Court warrants no interference.

[9]. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made by learned counsel for the petitioner.

[10]. Perusal of the service report (Annexure P-6) dated 03.07.2023 shows that the address of petitioner was given as 'Block-D, Mount Avenue (Model Town)

Hoshiarpur, whereas she happened to be resident of Akash Colony, Mohalla Ravi Dass Nagar, Hoshiarpur and thus, the proclamation issued under Section 82 Cr.P.C. was effected on the wrong address, therefore, vitiating the whole proceedings based thereupon.

[11]. Moreover, the petitioner has already put in appearance before the Trial Court in pursuance of order dated 15.09.2023 passed by this Court and having joined the proceedings, she has been granted regular bail vide order dated 19.09.2023 passed by the Trial Court.

[12]. In view of aforesaid, this petition is allowed. Consequently, the order dated 18.08.2023 passed by the Judicial Magistrate Ist Class, Hoshiapur is hereby set aside.

December 01, 2023

Atik

(HARKESH MANUJA)

JUDGE

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