

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

CRM-M No.57072 of 2023

Date of Decision:16.11.2023

Pankaj Kumar

...Petitioner

Versus

State of Haryana and another

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kunal Dawar, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court under Section 482 Cr.P.C. for quashing of the order dated 24.09.2021 (Annexure P-7) passed by the Sub Divisional Judicial Magistrate, Ellenabad whereby the petitioner has been declared a proclaimed person.

2. Learned counsel appearing for the petitioner, *inter alia*, contends that a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act) was filed against the petitioner herein and two others on the ground that the cheque dated 26.03.2018 for an amount of ₹16 lakhs issued in favour of the complainant in lieu of payment of goods purchased from the complainant, was dishonoured on account of 'funds insufficient'. The petitioner along with other co-accused were summoned under Section 138 of the NI Act vide summoning order dated 10.07.2018. On 10.02.2020, the petitioner appeared before the learned trial Court through counsel and as the petitioner was a resident of Mumbai, his counsel submitted

that the petitioner would put in appearance on the next date of hearing, which was fixed for 04.04.2020. Thereafter, due to outbreak of COVID-19 pandemic, the matter was again taken up on 05.01.2021 and 02.04.2021. On 02.04.2021, due to pandemic, the petitioner could not travel from Mumbai to Sirsa and thus, sought one more opportunity for appearance. Thereafter, the matter was adjourned to 09.06.2021. However, the matter was taken up on 29.05.2021 instead of 09.06.2021 and due to resurgence of pandemic, was further adjourned to 06.08.2021. On 06.08.2021, the petitioner could not put in appearance due to travel restrictions imposed owing to pandemic and the trial Court issued proclamation against the petitioner and accused No.3 for 24.09.2021. On 24.09.2021, the trial Court declared the petitioner and accused No.3 proclaimed persons and ordered to register FIR against them under Section 174A IPC and further to attach their movable/immovable property. Aggrieved by the said impugned order dated 24.09.2021, the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the impugned order is liable to be set aside on the ground that the mandate of Section 82 Cr.P.C. has not been followed in its letter and spirit by the trial Court. First of all, in the eventuality of non-appearance of the petitioner, the Court ought to have issued warrants to secure his presence and thereafter, issued the proclamation by recording reasons on the basis of which it believed that the person against whom the warrant issued, has absconded or concealed himself to avoid execution of warrant. However, in the present case, without making an attempt to secure presence of the petitioner by issuing warrants, proclamation was issued for 24.09.2021, on which date, ultimately, the petitioner was declared a proclaimed person. It is further contended that even the proclamation issued was not

executed, as the petitioner was never served. The executing officer in his report mentioned that he reached at the address mentioned in the proclamation where the building guard and the record keeper informed him that the petitioner was running the company from the rented premises but now, they are not aware of the whereabouts of the place from where the company is being run or the residence of the petitioner. The executing officer pasted a copy of the proclamation at the closed office on 16.08.2021 and the second copy was pasted on the notice board of the court on 21.08.2021. It is also contended that the pasting of proclamation by the executing officer on the closed building, despite being made aware by the guard and the record keeper that the petitioner was not operating from the said building and they were not aware about the new address, cannot be considered to be a valid execution of the proclamation. In support of his arguments, counsel for the petitioner relies upon the judgment passed by this Court in ***Sonu vs. State of Haryana 2021 (1) RCR (Cri.) 319*** and the judgment passed by the Gujarat High Court in ***Govindbhai Patel Vs. State of Gujarat 2004 (4) RCR (Criminal) 830***. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

4. Notice of motion.

5. Mr. Gurmeet Singh, AAG, Haryana, who is present in Court, accepts notice for respondent No.1 and supports the order passed by the trial Court by contending that the petitioner did not put in appearance before the trial Court intentionally and deliberately and therefore, having left with no other option, proclamation was issued to secure his presence.

6. I have heard learned counsel for the parties and perused the record of the case with their able assistance and the case is taken up for final disposal with the consent of parties.

7. While the scheme of criminal justice system necessitates curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

8. As far as possible, presence of the accused in the eventuality of his non-appearance ought to be secured by issuing summons or bailable warrants, non-bailable warrants and proclamation should not generally be issued. A perusal of the impugned order reveals that the trial Court without issuing summons or bailable warrants straightway issued proclamation, much less, without recording reasons of its belief that the petitioner has absconded or is concealing himself. This Court in the judgment passed in ***Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506*** has held that the Court is first required to record its satisfaction before issuance of process under Section 82 Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in ***Sonu's case*** (supra), it has been held that prior issuance of warrant of arrest by the Court is *sine qua non* for issuance and publication of the proclamation and the Court has to first issue warrant of arrest against the person concerned. The conditions specified in Section 82 (2) Cr.P.C. for the publication of a proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity.

9. Furthermore, the executing officer in his statement categorically stated that the petitioner was running the company in rented premises and now whereabouts of his residence in Mumbai were not known. As the whereabouts of the petitioner could not be ascertained, he pasted the proclamation outside the closed premises on 16.08.2021. In the absence of whereabouts of the petitioner and without ascertaining the place where the petitioner ordinarily resides, the execution of the proclamation cannot be said to be a valid execution.

10. The sole purpose of issuance of non-bailable warrants or issuance of proclamation is to secure presence of the accused before the trial Court. The petitioner in the present case has himself come forward and has undertaken to appear before the trial Court on each and every date.

11. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to the respondent No.2 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of respondent No.2. The impugned order dated 24.09.2021 vide which the petitioner was declared proclaimed person is set aside. The petitioner is directed to appear before the trial Court within a period of 15 days from today and on his doing so, he shall be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of ₹10,000/- to be deposited with the District Legal Services Authority, Sirsa for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

November 16, 2023
reena/Pankaj*

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