

CRM-M-63295-2023
Date of decision: 16.12.2023

Arjun BhanotPetitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sardavinder Goyal, Advocate
for the petitioner (Through V.C.)

Ms. Navreet Kaur Barnala, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 11.10.2022 passed by the learned Judicial Magistrate 1st Class, Bathinda in COMA No.1059 of 2019 (Annexure P-1), whereby, the petitioner has been declared as proclaimed person being illegal and in violation of the provisions of Section 82 of Cr.P.C.

2. Learned counsel appearing for the petitioner *inter alia* contends that a complaint under Section 138 of the Negotiable Instruments Act (in short ‘the Act’) was filed against the petitioner on the ground of dishonouring of cheque bearing No. 807651 dated 10.10.2014. He further submits that no role *qua* the petitioner is specified in the complaint in question and thus, the same is not maintainable and without observing the contents of the complaint and the fact that no case against the petitioner is made out, the learned trial Court issued the summons against the petitioner to face the proceedings under Section 138 of the Act.

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3. Learned counsel for the petitioner submits that this Court vide its order dated 08.09.2022 passed in CRM-M-37169-2022 with CRM-M-39885-2022 has already stayed the proceedings pending before the learned Judicial Magistrate 1st Class, Bathinda and rather to stay the proceedings in the complaint pending before it, learned Judicial Magistrate 1st Class, Bathinda, took up the matter on 11.10.2022 and declared the accused/petitioner as proclaimed person and thus, the impugned order passed by the learned Judicial Magistrate 1st Class, Bathinda, is in violation of the directions issued by this Court. Aggrieved by the said impugned order dated 11.10.2022 (Annexure P-1), the petitioner has approached this Court by way of instant petition.

4. 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 and ultimately, the petitioner was declared a proclaimed person. 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.

5. Notice of motion.

6. Ms. Navreet Kaur Barnala, AAG, Punjab, who is present in Court, accepts notice for respondent No.1 and supports the order passed by the learned 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.

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

8. 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.

9. A perusal of the impugned order reveals that the trial Court issued proclamation 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 of Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable

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illegality. In the judgment passed by this Court in *Sonu Vs. State of Haryana* **2021 (1) RCR (CrI.) 319**, it has been held that 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.

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 11.10.2022 (Annexure P-1) vide which the petitioner was declared proclaimed person is set aside.

12. 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 Rs.10,000/- to be deposited with the District Legal Services Authority, Bathinda, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

16.12.2023
Neha

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