

CRM-M-58523-2023
Date of decision: 20.11.2023

Vanam Murali Yadav

Versus

Vikas Sapra and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Pankaj Bali, Advocate
for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of order dated 16.07.2018 (Annexure P-8) passed by the learned Judicial Magistrate, 1st Class, Karnal, vide which the petitioner was declared as proclaimed person in a case bearing NACT No.1225 of 2017 dated 29.04.2017 under Section 138 of the Negotiable Instruments Act titled as ‘Vikas Sapra Vs. Vanam Murali Yadav.’

2. Brief facts of the case are that a complaint under Sections 138 & 142 of the Act was filed against the petitioner on the ground that the accused/petitioner used to purchase buffaloes from the complainant/respondent No.1 and his friend-Ramesh for few years and petitioner used to pay the price regularly. On 28.08.2016, the petitioner purchased five buffaloes from the complainant and promised him to pay an amount of Rs.3,52,000/- after 20 days. Thereafter, the complainant tried to contact the petitioner about the payment but the petitioner had postponed the matter on one pretext or the other by promising

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him that he will also pay the complainant an interest @ 18% P.A. and when brother of Ramesh went to Hyderabad to take the amount of the complainant, the petitioner issued a post dated cheque bearing No.929912 dated 10.03.2017 from his account No.20083231125 of SBI, Behl RnD Complex, Firozguda, Bowenpally Post, Hyderabad in favour of the complainant in discharge of his liability. On encashment of a cheque, the same was returned with memo dated 15.03.2017 with remarks 'insufficient funds.' Consequently, the complainant sent a legal notice dated 01.04.2017 to the accused through registered post through his counsel which had been received back unserved with remarks 'unknown' and thus, the present complaint was got registered.

3. Learned counsel appearing for the petitioner *inter alia* contends that the presence of the petitioner was secured through notice by way of speed post but the same had not been received back served or otherwise and by raising a presumption of service as provided under Section 27 of General Clauses Act, 1987, service of accused/petitioner was deemed to be effected and on his non-appearance, he was summoned throughailable warrants in the sum of Rs.5,000/- for 12.10.2017. On 12.10.2017, againailable warrants in the sum of Rs.5,000/- were issued to secure the presence of the petitioner for 03.01.2018. On 03.01.2018, 20.03.2018 and 13.04.2018 non-ailable warrants were repeatedly issued against the petitioner and the case was fixed for 29.05.2018. On 29.05.2018, the trial Court issued proclamation under Section 82 of Cr.P.C. against the petitioner for 16.07.2018. On 16.07.2018, the trial Court declared the petitioner proclaimed person and evidence of the complainant under Section 299 of Cr.P.C. was closed. Aggrieved by the said

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impugned order dated 16.07.2018 (Annexure P-8), the petitioner has approached this Court by way of instant petition.

4. Learned counsel appearing for the petitioner submits that the bailable warrants issued to the petitioner were never served and, therefore, the finding of the trial Court that the petitioner is intentionally concealing, is erroneous. Further, the trial Court vide order dated 29.05.2018 observed that since non-bailable warrants have been received back with the report that the accused/petitioner was not found at the given address, he cannot be served through ordinary process and issued proclamation under Section 82 Cr.P.C. for 16.07.2018. Ultimately, vide impugned order dated 16.07.2018, the petitioner has been declared as proclaimed person. It is contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court.

5. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

6. Notice of motion.

7. Mr. Gurmeet Singh, AAG, Haryana, who is present in Court, accepts notice for respondent No.2 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.

8. However, learned State counsel very fairly concedes that the matter between the parties has been compromised. The learned trial Court has recorded the statement of the complainant to the effect that the complainant

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wishes to withdraw the complaint filed under Section 138 of the Negotiable Instruments Act, 1881.

9. Learned trial Court vide order dated 06.09.2023 (Annexure P-10) has ordered the dismissal of the complaint as withdrawn on the basis of the statement suffered by respondent No.1/complainant.

10. 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.

11. 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.

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

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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 as nullity. Since the impugned order dated 16.07.2018 (Annexure P-8) suffers from incurable illegality, the same would not have any force of law.

13. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to respondent No.1 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of respondent No.1. The impugned order dated 16.07.2018 (Annexure P-8) vide which the petitioner was declared proclaimed person is set aside.

(HARPREET SINGH BRAR)
JUDGE

20.11.2023*Neha*

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