

CRM-M-59416-2023
Date of decision: 24.11.2023

ManishPetitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sahil Choudhary, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, 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 03.01.2018 (Annexure P-1)(wrongly mentioned in the petition as 16.05.2023) in complaint under Sections 138/142 of the Negotiable Instruments Act, 1881 (in short ‘the Act’) and FIR No.52 dated 20.01.2018 under Section 174-A of IPC registered at Police Station Jagadhari City, District Yamunanagar (Annexure P-2).

2. Learned counsel appearing for the petitioner, *inter alia*, contends that a complaint under Sections 138 & 142 of the Act, 1881 was filed against the petitioner on the ground of dishonouring of cheque bearing No. 000007 dated 09.03.2016 amounting to Rs.70,000/- issued in favour of the complainant by the petitioner in discharge of his liability.

3. Learned counsel appearing for the petitioner contends that the petitioner was not aware about the complaint filed by the complainant and the summons of the said complaint were never served upon the petitioner as he has

changed his residence, therefore, he could not appear before the learned trial Court. He further contends that on his non-appearance, the trial Court declared the petitioner as proclaimed person vide order dated 03.01.2018 and the intimation was further sent to SHO concerned to facilitate him to lodge an FIR against the proclaimed person for commission of offence under Section 174-A IPC. Aggrieved by the said impugned order dated 03.01.2018 (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, petitioner was declared as proclaimed person on 03.01.2018. 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***.

5. Notice of motion.

6. Mr. Vikas Bhardwaj, AAG, Haryana who is present in Court,

accepts notice for the respondent 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. 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 and non-bailable warrants/proclamation should not generally be issued. A perusal of the impugned order reveals that the trial Court without issuing summons or bailable warrants straight away 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.

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. 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 with regard to the compromise effected with the petitioner and the original complaint filed by the complainant was dismissed as withdrawn by the learned trial Court vide order dated 05.04.2018 (Annexure P-3).

12. The question which arises for consideration of this Court is whether on account of withdrawal of the complaint under Sections 138 & 142 of the Act on the basis of compromise, the impugned order dated 03.01.2018 and FIR under Section 174-A deserves to be quashed?

13. The stand of learned counsel representing the petitioner is that the petitioner has been declared a proclaimed person in contravention of the prescribed procedure under Section 82 of the Code of Criminal Procedure. The petitioner was never served before the proclamation was issued under Section

82 Cr.P.C. Both the parties have settled the matter amicably which has resulted in withdrawal of the complaint under Sections 138 & 142 of the Act. In the factual backdrop of this case, undisputedly, once the substantive offence already stands settled between the petitioner and the complainant, the impugned order dated 03.01.2018 and FIR under Section 174-A would be of no consequence.

14. Reliance in this regard has been placed upon various pronouncements on the issue involved in the present case. In **CRM-M-43813-2018, Baldev Chand Bansal vs. State of Haryana and another, decided on 29.01.2019, Vikas Sharma vs. Gurpreet Singh Kohli and another, 2017, (3) L.A.R. 584, Microqual Techno Limited and others Vs. State of Haryana and another, 2015 (32) RCR (CrI.) 790 and Rajneesh Khanna Vs. State of Haryana and another, 2017(3) L.A.R. 555**, the Coordinate Benches of this Court in identical circumstances, has held that since the main complaint filed under Section 138 of the Act stands withdrawn in view of an amicable settlement between the parties, therefore, the impugned order and consequent FIR under Section 174-A IPC would be of no use.

15. A Coordinate Bench of this Court in **Vikas Gupta vs. State of Haryana and others**, while quashing the FIR under Section 174-A of the IPC in **CRM-M-19636-2018** decided on 01.08.2018 has observed the following:-

“The ultimate aim, objective and goal of a legal system is to reconcile the social conflicts. Law is required only to ensure that people do not have to fight with each other just to protect their right to property, right to life and liberty and other rights secured to them by the legal system. The civil disputes are the conflicts between two parties, having lesser overtones for

the social order, social harmony or the society as such. Hence absolute freedom is given to the parties to settle their disputes by compromises, of course, coming with certain legal consequences as well. However, the criminal disputes do not necessarily restrict themselves to only two parties to the dispute in terms of their scope, consequences and effect. The criminal acts tend to cast their effect and consequences even upon the society at large. Therefore, the law prescribes punishment, severe punishments and the extreme punishments, including death penalty for criminal acts.”

16. Learned counsel representing the State has not been able to controvert the aforesaid facts and the position of law as laid down in the aforesaid judgment.

17. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 03.01.2018 (Annexure P-1) vide which the petitioner was declared proclaimed person as well as FIR No. 52 dated 20.01.2018 under Section 174-A of IPC are hereby set aside.

(HARPREET SINGH BRAR)
JUDGE

24.11.2023
Neha

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