

CRM-M-59804-2023
Date of decision: 29.11.2023

Raja QureshiPetitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Yashveer Kharb, Advocate
for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

Learned counsel for the petitioner wishes to withdraw the prayer for quashing of Annexure P-1, Annexure P-2 and Annexure P-6 and confines his prayer for quashing of the order dated 13.07.2023 (Annexure P-5) passed by the learned Judicial Magistrate 1st Class, Panipat, whereby the petitioner has been declared as proclaimed person.

2. Learned counsel appearing for the petitioner, *inter alia*, contends that a complaint under Sections 138 & 142 of the Negotiable Instruments Act, 1881 (in short 'the Act') was filed against the petitioner on the ground of dishonouring of cheques bearing No. 026905 dated 05.07.2019 amounting to Rs.2,00,000/- and No. 026906 dated 05.07.2019 amounting to Rs. 3,00,000/-, issued in favour of the complainant/respondent No.2 by the petitioner in discharge of his liability.

3. Learned counsel appearing for the petitioner, *inter alia*, contends that the petitioner along with other accused was summoned under Section 138

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of the Act vide order dated 04.09.2019 (Annexure P-2) for 12.02.2020. He further submits that the petitioner has no concern with the King and King Layer Poultry Farm and the same was being run by Hamid Hasan @ Chaman, Shoyab Anwar, Bal Jahan and Shah Anwar and the address mentioned in the criminal complaint is of Shoyab Anwar and Shah Anwar. Thereafter, on 12.02.2020, presence of the accused/petitioner was secured through issuance of non-bailable warrants for 27.10.2020. Thereafter, due to outbreak of pandemic COVID-19, the matter was adjourned to 14.05.2021 and 28.01.2022 for the purpose already fixed. On 28.01.2022, 10.11.2022 and 23.02.2023 on account of receipt of report regarding non-bailable warrants issued against the accused not received back or unexecuted, fresh non-bailable warrants against the petitioner were issued for 03.05.2023. On 03.05.2023, the trial Court issued proclamation under Section 82 of Cr.P.C. against the petitioner for 13.07.2023. On 13.07.2023, the trial Court declared the petitioner and other accused proclaimed person and further ordered to attach his movable/immovable properties. Aggrieved by the said impugned order dated 13.07.2023 (Annexure P-5), the petitioner has approached this Court by way of instant petition.

4. Learned counsel appearing for the petitioner submits that the non-bailable warrants issued to the petitioner were never served and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Further, the trial Court vide orders dated 10.11.2022, 23.02.2023 and 03.05.2023 observed that since non-bailable warrants have not been executed till date or not received back, he cannot be served through ordinary

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process and issued proclamation under Section 82 Cr.P.C. for 13.07.2023. Ultimately, vide impugned order dated 13.07.2023, 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.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.

8. 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.

9. 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.

10. A perusal of the impugned order reveals that the trial Court issued

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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 (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.

11. 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.

12. 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 13.07.2023 (Annexure P-5) vide which the petitioner was declared proclaimed person is set aside.

13. 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

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

(HARPREET SINGH BRAR)
JUDGE

29.11.2023

Neha

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