

CRM-M-62801-2023
Date of decision: 14.12.2023

Versus

State of Punjab and another ...Respondent

Present: Mr. Manoj Kumar, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

2. Learned counsel appearing for the petitioner *inter alia* contends that a complaint under Section 138 of the Act was filed against the petitioner on the ground of dishonouring of cheque bearing No. 002475 dated 18.01.2018 amounting to Rs. 7,69,624/- issued in favour of the complainant/respondent No.2 by the petitioner in discharge of his liability. The petitioner was summoned under Section 138 of the Act vide summoning order dated 07.03.2018. On 19.04.2018, the presence of the accused/petitioner was secured

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through bailable warrants along with one surety in the like amount for 07.06.2018 in the sum of Rs.10,000/- on account of his non-appearance. Thereafter, on 07.06.2018, non-bailable warrants were issued against the petitioner for 04.08.2018 on account of receipt of report regarding bailable warrants issued against the accused received back unserved. On 04.08.2018 and 24.09.2018, again non-bailable warrants were issued against the petitioner for 24.09.2018 and 13.11.2018, respectively. On 13.11.2018 and 05.01.2019, the trial Court issued proclamation under Section 82 of Cr.P.C. against the petitioner for 05.01.2019 and 27.02.2019, respectively and on 25.04.2019, the trial Court declared the petitioner proclaimed person/absconder. Aggrieved by the said impugned order dated 25.04.2019 (Annexure P-15), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the bailable warrants issued against the petitioner were never served as he was out of station and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Further, the trial Court vide order dated 13.11.2018 observed that since non-bailable warrants issued to the accused/petitioner have received back unserved with a report that accused/petitioner has not met at home, he cannot be served through ordinary process and issued proclamation under Section 82 Cr.P.C. for 05.01.2019. Ultimately, vide impugned order dated 25.04.2019, the petitioner has been declared as proclaimed person/absconder. 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.

4. 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 interest 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 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 25.04.2019 (Annexure P-15) vide which the petitioner was declared proclaimed person/absconder, is hereby 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, Jalandhar, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

14.12.2023
Neha

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