

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

122/4.

CRM-M No.61154 of 2023

Date of Decision:07.12.2023

Ram Dhari

...Petitioner

Versus

Anand Singla

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. HPS Ghuman, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court under Section 482 Cr.P.C. seeking quashing of impugned order dated 07.11.2019 (Annexure P-3) whereby proclamation was issued against the petitioner under Section 82 Cr.P.C. as well as order dated 19.12.2019 (Annexure P-5) vide which he has been declared proclaimed person, passed by the learned Judicial Magistrate 1st Class, Jhajjar.

2. Learned counsel appearing for the petitioner, *inter alia*, contends that a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act) was filed against the petitioner herein at the instance of respondent-complainant on the ground that son of the petitioner namely Devender Kumar Sharma agreed to supply some business items/goods to the respondent against which an amount of ₹11 lakhs was deposited with him. However, the said items were not supplied and the petitioner issued two cheques in order to return the amount of ₹11 lakhs, which were dishonoured. It is in this backdrop, complaint under Section 138 of the NI Act was filed against the petitioner in which he has been declared a proclaimed person.

3. Learned counsel appearing for the petitioner submits that the impugned order is liable to be set aside on the ground that his son namely Devender Kumar Sharma has already returned the amount of ₹11 lakhs. It is further contended that the impugned orders were passed in derogation of provisions of Section 82 Cr.P.C. as the proclamation was never executed upon the petitioner. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

4. I have heard learned counsel for the petitioner and perused the record of the case with his able assistance.

5. 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.

6. A perusal of the impugned order dated 19.12.2019 indicates that the complainant has received the entire amount of ₹11 lakhs from Devender Kumar Sharma i.e. son of the petitioner. Further perusal of the impugned orders indicates that the trial Court while passing impugned orders did not record its satisfaction that the petitioner is concealing himself from the process of law and his non-appearance before it was intentional and deliberate. 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 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 as nullity.

7. 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.

8. In view of the aforesaid facts and circumstances, the impugned orders dated 07.11.2019 (Annexure P-3) and 19.12.2019 (Annexure P-5) are quashed. The petitioner is directed to appear before the trial Court on or before 18.12.2023 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 ₹10,000/- to be deposited with the District Legal Services Authority, Jhajjar for wasting precious time of the Court.

9. However, keeping in view the fact that the petitioner is aged 80 years and resident of Panipat whereas the complaint is pending adjudication before the trial Court at Jhajjar, after appearance of the petitioner before the trial Court on or before 18.12.2023 as directed by this Court, his further personal appearance before the trial Court is exempted, in view of the ratio laid down by this Court in CRM-M No.25963 of 2023 titled as ***Suresh Kumar and another Vs. The State of Haryana and another 2023 (2) Law Herald 1498***, subject to the following conditions:-

i). Petitioner shall be represented through his counsel;

- ii). shall not delay/stall the trial proceedings;
- iii). shall not dispute their identity as accused;
- iv). shall have no objection if the prosecution evidence is recorded in their absence but in the presence of his counsel;
- v). shall appear before the trial Court as and when required; and
- vi). any other condition, which the trial Court may impose.

10. The instant petition stands disposed of in above terms, without issuing notice to the respondent in order to save time of the Court and to avoid litigation expenses to be incurred on the part of the respondent.

(HARPREET SINGH BRAR)
JUDGE

December 07, 2023
Pankaj*

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