

131 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-61291-2023

Date of decision:- 06.12.2023

SATPAL SINGH

...Petitioner

Versus

JOGINDER SINGH AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. Navinder Jit Singh Dandiwal, Advocate
for the petitioner.

Ms. Navreet Kaur Barnala, AAG Punjab.

HARPREET SINGH BRAR, J. (Oral)

1. The petitioner has approached this Court under Section 482 Cr.P.C. praying for setting aside the order dated 16.09.2023 (Annexure P-5) passed by Judicial Magistrate Ist Class, Moga whereby petitioner has been declared as proclaimed person in complaint No. NACT/11/2023 titled as “Joginder Singh Vs. Satpal Singh” under Section 138 read with Section 142 of Negotiable Instruments Act registered on 05.01.2023.

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 No.1-complainant on the ground that the petitioner herein borrowed a loan of Rs. 9,00,000/- from the respondent No. 1 in the month of July-2019 and in order to discharge his liability, issued a cheque bearing No. 562166 dated 21.11.2022 amounting to Rs. 9,25,000/- out of his account No. 35527280751 SBI, ADB Branch Moga with the assurance that the same will be encashed on presentation. However, when the said cheque was presented for

encashment, it was dishonoured with the remarks 'funds insufficient'. The respondent No. 1 served the legal notice dated 24.11.2017 upon the petitioner to discharge his credit liability but the same was not responded to by the petitioner and therefore, having left with no other option, complaint under Section 138 of the NI Act was made by the complainant against the petitioner. In the said complaint, vide impugned order dated 16.09.2023, petitioner herein has been declared a proclaimed person.

3. Learned counsel appearing for the petitioner submits that the impugned order is liable to be set aside as the proclamation was issued against Ram Gopal received back duly served on 16.08.2023 but it is clear from the zimni order dated 25.08.2023 that the petitioner is Satpal and the proclamation was effected against one Ram Gopal. Hence, the petitioner was never served. It is further contended that wife of the petitioner had died in the year 2000 and thereafter petitioner was alone and he had started residing with her daughter at Village Landeke and doing job at Gurudwara Sahib-Baba Vishkarma Bhawan, G.T. Road, Talwandi as a Pathi. 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 impugned order dated 16.09.2023 (Annexure P-5) vide which the petitioner was declared proclaimed person is set aside. 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 Rs. 10,000/- to be deposited with the District Legal Services

Authority, Moga for wasting precious time of the Court.

12. The instant petition stands disposed of in above terms.

13. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

December 06, 2023

Ajay Goswami

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No