

128 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-62231-2023

Date of Decision: 11.12.2023

Shakti Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Varun Dutta, Advocate,
for the petitioner.

HARKESH MANUJA, J.(Oral)

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for seeking quashing of order dated 20.12.2019 passed by the Court of Judicial Magistrate Ist Class, Karnal (Annexure P-1), whereby, the petitioner was declared as proclaimed person, besides, registration of FIR No.493, dated 18.07.2022, under Section 174-A IPC, Police Station Sector 32-33, District Karnal (Annexure P-3).

2. Briefly stated, on account of dishonour of cheque bearing No.574533 dated 14.12.2018 amounting to Rs.1,16,877/-, a complaint bearing No.NACT-632-2019, under Section 138/142 of the Negotiable Instruments Act, 1881 (for short, "1881 Act"), titled as "*Medley Crop Science vs. M/s Maa Shakumbhary Mata Krishi Raksha Kender*" came to be filed at the instance of respondent No.2, wherein, the petitioner was summoned vide order dated 05.03.2019. Later on, on account of his non-appearance, the petitioner was declared as proclaimed person vide order

dated 20.12.2019, followed by registration of FIR No.493 dated 18.07.2022 under Section 174-A IPC against him.

3. Learned counsel for the petitioner submits that the process of declaring the petitioner as proclaimed person was never carried out in consonance with the mandate of Section 82 Cr.P.C. and thus, the said proceedings were vitiated.

4. Notice of motion.

5. Mr. Krishan K. Chahal, Addl. A.G., Haryana accepts notice on behalf of respondent No.1 and submits that the non-appearance of the petitioner was deliberate attempt on his part to avoid the process of law.

6. Mr. Sarthak Gupta, Advocate appears and accepts notice on behalf of respondent No.2 and support the cause of the petitioner while submitting that the complaint under Section 138 of the 1881 Act, already stands withdrawn, the matter being settled between the parties.

7. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

8. In the present case, the petitioner was summoned vide order dated 05.03.2019 passed by the Court of Judicial Magistrate Ist Class, Karnal, in a complaint under Section 138 of the 1881 Act, but on account of his non-appearance, an order for issuance of proclamation under Section 83 Cr.P.C. was issued by the Trial Court on 16.09.2019, which reads as under

Present:Sh. K.S. Kalsoura, ld. Counsel for the complainant.

Non-bailable warrants issued against accused received back unexecuted. As such, presence of accused be

secured through proclamation under Section 83 Cr.P.C. for 20.12.2019.

Executing police official is directed to effect the proclamation against the accused before 20.11.2019 and to appear before this court on 20.11.2019 to suffer a statement that the proclamation has been effected by him against the accused as ordered. Complainant is also directed to furnish the list of property of accused.

(A.K. Yadav)

JMIC, Karnal, 16.09.2019

UID (HR-0415)”

9. A perusal of aforesaid order shows that before issuance of direction to proceed under Section 83 Cr.P.C., no satisfaction whatsoever was recorded by the Court below as regards the petitioner, absconding or concealing himself, for which bailable/non-bailable warrants could not be executed upon him.

10. Thereafter, on 20.11.2019, the Trial Court has passed the following order:

“Present: Sh. K.S. Kalsoura, Id. Counsel for the complainant.

Proclamation issued against the accused received back duly published on 16.11.2019. Statement of Tamili Constable has also been recorded in this regard separately. Therefore, to come up on 20.12.2019 for presence of the accused. Complainant is also directed to furnish the list of property of accused.

(A.K. Yadav)

JMIC, Karnal, 20.11.2019

UID (HR-0415)”

11. A conjoin reading of orders dated 16.09.2019 and 20.11.2019 show that the proclamation was ordered on 16.09.2019 for 20.11.2019 being the date for appearance, however, the proclamation has been effected on 16.11.2019 and vide order dated 20.11.2019, the Trial Court adjourned the matter to 20.12.2019 for appearance of the petitioner and was declared as

proclaimed person on the said date i.e. 20.12.2019.

It may be important to note here that no proclamation whatsoever was issued by the Trial Court qua 20.12.2019 and thus, the order declaring him as proclaimed person on the said date is wholly vitiated in law. Moreover, perusal of order dated 23.11.2022, passed by Presiding Officer, National Lok Adalat-cum- Judicial Magistrate Ist Class, Karnal, shows that the main complaint under Section 138 of the 1881 Act already stands withdrawn by the complainant.

12. In view of the discussion made herein above as well as settlement arrived at between the parties, the present petition is allowed. Order dated 20.12.2019, passed by the court of Judicial Magistrate Ist Class, Karnal, declaring the petitioner as proclaimed offender as well as FIR No.493 dated 18.07.2022 along with all subsequent proceedings arising therefrom, are hereby quashed.

11.12.2023

sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned: yes/no

Whether reportable? yes/no