

125 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-869-2024

Date of Decision: 09.01.2024

Harish Garg

.....Petitioner

Versus

Bikram Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Surinder Garg, 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 quashing the order dated 22.09.2023 (Annexure P-13) passed by the Court of Judicial Magistrate Ist Class, Tarn Taran, whereby the petitioner was declared as proclaimed person.

2. In the present case, respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, against the petitioner on account of dishonour of cheque bearing No.032963, dated 15.05.2022, wherein the petitioner was summoned vide order dated 31.08.2022 (Annexure P-2). Having failed to appear in pursuance to the summoning order, petitioner was declared as proclaimed person by the Trial Court, vide order dated 22.09.2023.

3. Impugning the aforesaid order, learned counsel for the petitioner submits that the P.O. proceedings carried out against the petitioner, were in violation of the mandate prescribed under Section 82 Cr.P.C. as no clear cut 30 days period was ever afforded to him for appearance before the Trial Court.

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4. Notice of motion.

At this stage, as the challenge is merely to the order passed by the Trial Court, whereby the petitioner was declared as proclaimed person, the grant of hearing to the respondent may not be necessary as the matter primarily relates between the petitioner and the State and thus, the learned State counsel is requested to assist this Court in the matter. Even otherwise, it may go against the interest of the complainant as the proceedings before the Trial Court would be delayed and may cause unnecessary financial burden upon the complainant as well.

5. At the asking of the Court, Mr. Shubham Kaushik, AAG, Punjab accepts notice and vehemently opposes the prayer made in the present petition while submitting that the petitioner, despite having complete knowledge about the pendency of proceedings pending against him as well as about the summoning order, chose not to submit himself before the Trial Court and continued to evade the process.

6. I have heard learned counsel for the petitioner as well as State counsel and find substance in the submissions made on behalf of the petitioner.

7. In the present case, the proclamation was issued against the petitioner vide order dated 14.08.2023 for 30.08.2023. As per the records, the proclamation under Section 82 Cr.P.C. was effected on 20.08.2023 and on 30.08.2023, the matter was posted for 22.09.2023; when the petitioner was declared as proclaimed person.

8. A perusal of record shows that the proclamation effected on 20.08.2023 never confirmed the mandate of Section 82 Cr.P.C. as no clear

notice of 30 days was ever effected upon the petitioner for putting in appearance before the Court below and thus, the order passed against the petitioner, declaring him as proclaimed person on 22.09.2023, is wholly vitiated. The aforesaid view can also be derived from a decision made by this Court in case “Gurpreet Singh vs. State of Punjab”, reported as 2022(3) Cri.CC 136. Relevant para 4 is reproduced hereunder for reference:-

“Keeping in view the factual position, as noticed in order dated 17.01.2022, it is apparent that a clear period of 30 days w.e.f. the date when proclamation was actually affected upon the date nominated for causing appearance i.e. 28.08.2017 was not afforded to the petitioner and it is only a period of 26 days, which was afforded. Thus, bearing in mind the law laid down in Ashok Kumar’s case (supra) and Anita Sharma’s case (supra), the impugned order cannot sustain and is hereby set aside. The petition is accepted accordingly.”

9. In view of the above, the present petition is allowed, the order dated 22.09.2023 is set aside with the direction to the petitioner to appear before the Trial Court within a period of 10 days from the date of receipt of certified copy of this order and furnish his fresh bail bonds/surety bonds, which shall be accepted by the Trial Court to its satisfaction so that the proceedings in the main complaint case can commence. Till then, no coercive steps shall be taken against the petitioner.

10. The aforesaid order shall be subject to payment of costs of Rs.10,000/- to be deposited by the petitioner at the time of submissions of his bail bonds before the Trial Court/Duty Magistrate, which shall be released to the complainant upon verification.

09.01.2024
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned: yes/no
Whether reportable? yes/no