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

CRM-M-3422-2024

Date of decision: 23.01.2024

Parmod Rani Garg

....Petitioner

Versus

M/s Arora Iron and Steel Rolling Mills Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Kriti Avasthi, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing/setting aside of order dated 30.10.2019 (Annexure P-1) passed by the Court of learned Judicial Magistrate 1st Class, Ludhiana and all other subsequent proceedings vide which the petitioner has been declared as proclaimed offender under Section 138 of the Negotiable Instruments Act, 1881 (in short ‘the Act’) in a complaint case bearing No. COMA/52510/2013 titled as ‘Arora Iron and Steel Rolling Mills Pvt. Ltd. Vs. M/s Swati Cast Forge Pvt. Ltd.’

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 cheques bearing No. 980678 dated 01.04.2013, 980679 dated 29.03.2013, 981066 dated 13.04.2013, 981068 dated 17.04.2013, 981069 dated 08.05.2013, 981070 dated 13.05.2013, 983974 dated 23.05.2013 and 983975 dated 23.05.2013 amounting to Rs.5,51,343/-, Rs.7,75,277/-,

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Rs.9,05,817/-, Rs.6,00,694/-, Rs.10,66,073/-, Rs.5,29,056/-, Rs.4,00,000/- and Rs.5,26,513/- respectively, issued in favour of the complainant/respondent by the petitioner in discharge of his liability. He further submits that the petitioner was never served with the summons and was not aware about the proceedings against her. Pursuant to her non-appearance, the learned trial Court issued bailable warrants, non-bailable warrants and publication against the petitioner and ultimately, vide on 30.10.2019 (Annexure P-1), the trial Court declared the petitioner as proclaimed offender. Aggrieved by the said impugned order dated 30.10.2019 (Annexure P-1), the petitioner has approached this Court by way of instant petition.

Learned counsel appearing for the petitioner submits that the bailable warrants, non-bailable warrants or proclamation issued to the petitioner were never served and, therefore, the finding of the trial Court that the petitioner is intentionally evading her arrest, is erroneous. Further, the trial Court vide order dated 05.10.2018 observed that since non-bailable warrants have not been executed till date, she cannot be served through ordinary process and issued proclamation under Section 82 Cr.P.C. Ultimately, vide impugned order dated 30.10.2019, the petitioner has been declared as proclaimed offender. 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.

It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date of hearing.

I have heard learned counsel for the petitioner and perused the

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record of the case.

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.

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 herself. 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.

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 herself come forward and has undertaken to appear before the trial Court on each and every date of hearing.

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In view of the aforesaid facts and circumstances, the present petition is allowed 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, the impugned order dated 30.10.2019 (Annexure P-1) vide which petitioner was declared as proclaimed offender, is hereby set aside.

The petitioner is directed to appear before the trial Court within a period of 15 days from today and on her doing so, she shall be admitted to bail on her 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, Ludhiana, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

23.01.2024
Neha

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