

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

CRM-M-3451-2024(O&M)
Date of Decision: 22.01.2024

...Petitioner

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: None.

HARPREET SINGH BRAR J. (Oral)

1. The petitioner has approached this Court under Section 482 Cr.P.C. praying for quashing of order dated 20.09.2023 (Annexure P-2) vide which the petitioner has been declared as proclaimed person by learned Judicial Magistrate Ist Class, Faridabad in complaint case bearing NACT No. 972/2019 dated 11.02.2019 filed under Section 138 of Negotiable Instruments Act in case titled as ***Nisha Mourya Vs. Mohd. Rafi.***

2. In view of the resolution passed by Punjab & Haryana High Court Bar Association, there is no representation on behalf of the parties. However, perusal of the pleadings would indicate that the petitioner issued a cheque No. 997741 dated 28.12.2018, amounting to Rs. 5,00,000/-, drawn on ICICI Bank, SCO-145, 146, 147, Ground Floor, Sector-21C, Faridabad, in favour of the complainant-respondent No. 2, in discharge of his financial liability towards her but the said cheque was dishonoured by the Bank due to the reason “**FUNDS INSUFFICIENT**” vide return memo dated 29.12.2018. The complainant sent a legal notice dated 15.01.2019 through registered post to the petitioner, thereby calling upon him to make

payment of the dishonoured cheque and on account of non-payment of the cheque amount, the aforesaid complaint was filed before the learned Judicial Magistrate Ist Class, Faridabad. In the aforesaid complaint case, notice was issued to the petitioner, however, the summons could not be served upon him, based upon whichailable warrants and non-ailable warrants were issued, which were also never served or executed upon the petitioner. Ultimately, vide order dated 20.09.2023, the petitioner has been ordered to be declared as a proclaimed person and proceedings under Section 174-A IPC were initiated against him. It is further contended that non-appearance of the petitioner before the learned trial Court was neither intentional nor willful and the petitioner has not been served even once and, hence the proceedings against him are liable to be set aside. The petitioner is ready to join proceedings and undertakes to be remained present on each and every date of hearing.

3. I have perused the record of the case.

4. 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.

5. 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 in nature. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation as nullity. Once the impugned order passed under Section 82 Cr.P.C. is found to be suffering from an incurable illegality, the order vide which the proclamation was issued would be liable to be set aside.

6. 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.

7. In view of the aforesaid facts and circumstances, the impugned order dated 20.09.2023 (Annexure P-2) vide which the petitioner was declared proclaimed person is set aside. The petitioner is directed to appear before the trial Court within two weeks 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, subject to payment of costs of Rs.10,000/- to be deposited with the District Legal Services Authority, Faridabad, for wasting precious time of the Court.

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

(HARPREET SINGH BRAR)
JUDGE

22.01.2024
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No