

129

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

CRM-M-4156-2024

Date of decision: 25.01.2024

Anand Singh Mann

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Pankaj Nanhera, Advocate
Mr. Yogesh Vashishta, Advocate and
Mr. Rahul Gautam, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of order dated 18.12.2023 (Annexure P-1) passed by the Court of learned Judicial Magistrate 1st Class, Karnal in NACT Complaint No.3858 of 2021 filed on 21.12.2021 under Section 138 of the Negotiable Instruments Act, 1881 (in short ‘the Act’) vide which the petitioner has been declared as proclaimed person.

Brief facts of the case are that a complaint under Section 138 of Act has been filed against the petitioner by respondent No.2 before the trial Court and the case was fixed for appearance of the accused in pursuance of the notice issued to him. It is further alleged that the petitioner was not aware about the pendency of any complaint against him under the Act as he never received any notices, summons or warrants of complaint case. Further, when the petitioner did not appear before the trial Court having no knowledge about

the case, the trial Court has initiated P.O. proceedings against him by observing that he is concealing himself and avoiding his arrest and ultimately declared him proclaimed person. Aggrieved by the same, the petitioner has approached this Court by way of instant petition.

Learned counsel for the petitioner *inter alia* contends that the petitioner was not aware about the proceedings against him and was never served with the summons as he was not residing at the address given in the complaint by respondent No.2. Pursuant to his non-appearance, the learned trial Court declared the petitioner as proclaimed person vide order dated 18.12.2023 (Annexure P-1).

He further submits that theailable warrants, non-ailable warrants or proclamation issued to the petitioner were never served and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Further, the trial Court observed that since the accused/petitioner cannot be served through ordinary process and issued proclamation under Section 82 Cr.P.C. Ultimately, vide impugned order dated 18.12.2023, the petitioner has been declared as proclaimed person. 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.

Notice of motion to the official respondents only.

Ms. Geeta Sharma, DAG, Haryana, who is present in Court, accepts notice for respondent No.1 and supports the order passed by the learned trial Court by contending that the petitioner did not put in appearance before the

trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure his presence.

I have heard learned counsel for the parties and perused the record of the case with their able assistance and with the consent of parties, the matter is taken up for final disposal.

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

In view of the aforesaid facts and circumstances, the present petition is allowed without issuing notice to respondent No.2 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of respondent No.2, the impugned order dated 18.12.2023 (Annexure P-1) vide which petitioner was declared as proclaimed person, is hereby set aside.

The petitioner is directed to appear before the trial Court within a period of 15 days from today 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, Karnal, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

25.01.2024
Neha

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