

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-5174 of 2024
Date of Decision: February 01, 2024

Gurcharan Singh
.....Petitioner

versus

State of Haryana
.....Respondent

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Amitoj Singh Dhaliwal, Advocate for
Mr. Deepak Kaushal, Advocate for the petitioner

Harpreet Singh Brar, J. (Oral)

1. The petitioner has approached this Court under Section 482 Cr.P.C. for quashing of impugned order dated 01.12.2021 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Gurugram, District Gurugram whereby the petitioner was declared as proclaimed person in case No. NACT-17870-2017 titled as *M/s India Infoline Housing Finance Ltd. vs. Gurcharan Singh* and for quashing of FIR No. 1046 dated 10.12.2021 registered under Section 174-A IPC at Police Station Shivaji Nagar, District Gurugram (Annexure P-1).
2. The brief facts of the present case are that the present FIR was registered due to non-appearance of the petitioner in the complaint case filed under Section 25 of Payment and Settlement System Act, 2007 by complainant Vikash in case number NACT 17870-2017 titled as "M/S India Infoline Housing Finance Ltd Vs Gurcharan Singh" before the Court of learned Judicial Magistrate 1st Class, Gurugram. The complainant had instituted the complaint under Section 25 of Payment and Settlement System Act, 2007 against the petitioner in the year of 2017 for an amount of Rs. 18,363/- as the said amount was being deducted as EMI on monthly basis from his bank account. In the month of September, 2017 when the petitioner did not had said EMI amount in

his bank account and as such the ECS could not be executed in the month of September, 2017 on the ground of "Insufficient Funds" with return memo dated 06-09-2017, the complainant had filed a separate complaint under Section 138 of the Negotiable Instruments Act for the payment of entire loan amount. The petitioner had paid the entire cheque amount along with compensation to the complainant. Even in the said case, the petitioner was declared Proclaimed Person and as such a separate petition is also filed with the present petition for quashing of the Proclamation order and FIR under Section 174-A. The petitioner was not having any knowledge regarding the pendency of the present complaint case filed against him by complainant under Section 25 of Payment and Settlement System Act, 2007. Learned Judicial Magistrate 1st Class, Gurugram had earlier issued the process of proclamation against the petitioner vide order dated 07-02-2020 but due to the outbreak of COVID-19, the said proclamation could not be issued and thereafter the case was being adjourned as the Courts were not taking up the routine matters due to outbreak of COVID-19. Ultimately, the petitioner was declared as proclaimed person vide order dated 01-12- 2021 and the matter was adjourned to 20-12-2021 and FIR under Section 174-A IPC was registered against him. When the petitioner came to know about the pendency of the complaint case as well as the FIR registered against him in the month of December 2023, he immediately paid the entire loan amount along with the compensation to the complainant. After having received the complete payment from the petitioner, the complainant moved an application for withdrawal of the said complaint case under Section 25 of Payment and Settlement System Act, 2007 against the petitioner as well as the withdrawal of complaint under Section 138 of the Negotiable Instruments Act.

3. Learned counsel appearing for the petitioner submits that the non-appearance of the petitioner was not deliberate and intentional and thus, aggrieved by the said order, he has approached this Court by way of instant petition. It is contended that the impugned order is liable to be set aside on the ground of unintentional non-appearance of the petitioner due to unavoidable circumstances.

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

5. Notice of motion.

6. Ms. Geeta Sharma, DAG Haryana, who is present in Court, accepts notice for the respondent and submits that the impugned order has been passed on the sole ground of the absence of the petitioner, however, it is not disputed by her that the parties have compromised the matter.

7. 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.

8. 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.

9. 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

Crl. Misc. No. M-5174 of 2024

-4-

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.

10. 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.

11. In view of the aforesaid facts and circumstances, the impugned order dated 01.12.2021 (Annexure P-3) and FIR No. 1046 dated 10.12.2021 registered under Section 174-A IPC at Police Station Shivaji Nagar, District Gurugram (Annexure P-1) are quashed qua the petitioner.

12. The instant petition stands disposed of.

February 01, 2023

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(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No