

1182024:PHHC:016177

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-5585-2024

Date of Decision: February 06, 2024

DEEPAK MITTAL

.....Petitioner

Versus

STATE OF PUNJAB AND ANR

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vishal Mittal, Advocate for the petitioner.  
Mr. Gurlal Singh Dhillon, AAG, Punjab.

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HARKESH MANUJA, J. (ORAL)

By way of the present petition filed under Section 482 CrPC, prayer has been made for setting aside the order dated 31.10.2022 passed by the Judicial Magistrate First Class, Patiala whereby the petitioner was declared as proclaimed person in complaint bearing No.COMA/4196/2019 titled as ‘Atul Mangla Vs. Deepak Mittal’.

2. In the present case, in pursuance to a complaint bearing No. COMA/4196/2019 titled as ‘Atul Mangla Vs. Deepak Mittal’ filed under Section 138 of Negotiable Instrument Act, 1881, the petitioner was summoned, however, on account of his non-appearance he was declared as proclaimed person vide order dated 31.10.2022.

3. Impugning the same, learned counsel for the petitioner submits that the proceedings while declaring the petitioner as proclaimed person were carried out in violation of Section 82 of CrPC as no clear cut 30 days’ period was ever afforded to him under the

proclamation and thus, the order dated 31.10.2022 was liable to be set aside.

4. On the other hand, learned State counsel vehemently opposes the prayer made herein while submitting that the petitioner despite having knowledge about the pendency of the proceedings against him besides the summoning, chose not to appear before the trial Court and thus the impugned order warrants no interference.

5. I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made by learned counsel for the petitioner.

6. In the present case, vide order dated 18.07.2022, learned Judicial Magistrate First Class, Patiala ordered for issuance of proclamation under Section 82 of CrPC for 01.09.2022 being the date for appearance. A further perusal of the order dated 01.09.2022 shows that the proclamation was effected on 08.08.2022 for 01.09.2022 and since 30 days period did not elapse, the matter was adjourned to 31.10.2022 for awaiting appearance of the petitioner. The orders dated 18.07.2022 and 01.09.2022 passed by the trial Court are reproduced hereunder:-

**Order dated 18.07.2022**

“Today the case was fixed for filing correct address of accused but complainant has given an application that the address given by the complainant is last known address of accused. Now substituted mode is required to procure the presence of the accused. Let, presence of accused be secured through proclamation by way of publication in the newspaper “Azad Soch” for 01.09.2022 on depositing of publication charges within a week.”

Order dated 01.09.2022

“Publication dated 08.08.2022 received back and placed on record. Period of 30 days has not been elapsed yet. Now case is adjourned to 31.10.2022 for awaiting appearance of accused.”

7. Once the proclamation was published on 08.08.2022, carrying the date for appearance as 01.09.2022, the same clearly fell short of the statutory period of 30 days as prescribed under Section 82 of CrPC with there being no specific publication for 31.10.2022, the petitioner could not have been declared as proclaimed person vide order dated 31.10.2022. Resultantly, the impugned order dated 31.10.2022 passed by learned Judicial Magistrate First Class, Patiala being in violation of mandate of Section 82 CrPC is thus set aside.

8. Moreover, the petitioner is even willing to submit himself to the jurisdiction of the trial Court and face the proceedings pending against him under Section 138 of Negotiable Instruments Act, 1881. In view thereof, petitioner is directed to appear before the trial Court within a period of 7 days from today and in case of his doing so, he will be released on bail on his furnishing adequate bail bonds/surety bonds along with an affidavit of assurance that he shall continue to appear before the trial Court unless granted exemption specifically to its satisfaction. Till then no coercive steps shall be taken against him.

06.02.2024  
Tejwinder

(HARKESH MANUJA)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |

