

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-5635 of 2024
Date of Decision: February 15, 2024

Sunil Jain

.....Petitioner

versus

Shayama International through its partner Varun Kundra

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Rahul Rampal, Advocate
for the petitioner

Harpreet Singh Brar, J. (Oral)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 29.04.2023 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Jalandhar vide which the petitioner was declared as proclaimed person in criminal complaint No. 3434 dated 27.10.2020 (Annexure P-1) titled as *Shayama International vs. Sunl Jain and another* filed under Section 138 of the Negotiable Instruments Act.
2. Brief facts of the case are that respondent/complainant filed one complaint under Section 138 of the Negotiable Instruments Act against the petitioner being proprietor/partner of National Rubbers & Chemical Industries, Jalandhar on the allegations that on account of business dealings, the petitioner had issued one cheque bearing No.000254, dated 23.06.2020 amounting to Rs.1,41,600/- drawn on Andhra Bank, PIMS Hospital, Jalandhar and on presentation, the said cheque was dishonored with remarks "ACCOUNT BLOCKED" and in the said complaint the petitioner was summoned vide

summoning order dated 27.05.2022. The *address of* firm and petitioner was given as Basti Bawa Khel, Jalandhar and the said firm i.e. National Rubbers & Chemical Industries, Jalandhar is lying closed since December, 2018 and no one is available in the premises of said firm since 2018 and inspite of said fact, respondent/complainant had given address of firm, which is lying closed and thus, petitioner was never served nor was aware about proceedings of present complaint case. The petitioner was declared proclaimed person vide impugned order dated 29.04.2023.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner was never served with the legal notice as well as summons and proclamation and the petitioner does not have any intention of not appearing before the trial Court. Vide order dated 29.04.2023(Annexure P-3), the petitioner has been declared as proclaimed person.

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 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. 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

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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 (Crl.) 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.

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 present petition is allowed, without issuing notice to the private respondent in order to save time of the Court and to avoid litigation expenses to be incurred on the part of the respondent and the impugned order dated 29.04.2023 (Annexure P-3) vide which the petitioner was declared proclaimed person is set aside.

8. 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.

(HARPREET SINGH BRAR)
JUDGE

February 15, 2024

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No