

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-6205 of 2024
Date of Decision: February 06, 2024

Namit Benson

.....Petitioner

versus

M/s Farm Fuel Centre and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Anuj Balian, Advocate and
Mr. Abhinav Kalia, 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 21.10.2023 (Annexure P-4) and order dated 20.12.2023 passed by the learned Judicial Magistrate 1st Class, Narwana (Annexure P-6) whereby proclamation is issued against the petitioner.
2. Learned counsel appearing for the petitioner *inter alia* contends that a complaint under Section 138 of the Negotiable Instruments Act (in short ‘the Act’) was filed against the petitioner on the ground of dishonouring of cheque. He further submits that petitioner is the resident of Rajasthan State and is making his best efforts to attend the Court regularly except on few dates due to unavoidable circumstances. Thereafter, the petitioner was declared proclaimed offender and was taken into custody vide order dated 27.02.2023 and was sent to judicial custody. The petitioner was released on bail vide order dated 28.08.2023 on the condition that he would pay the amount of Rs. 3,00,000/- and will pay the

remaining amount by 08.09.2023. Learned counsel for the petitioner further submits that the petitioner is making earnest efforts to repay the settled amount of Rs. 26 lacs and out of the settled amount, Rs. 7 lacs he has already paid. The cheque amount is of Rs. 20 lacs and as per the settlement the complainant-respondent is being adequately compensated. However, he submits that learned trial Court is pressurizing the petitioner to pay the entire amount in lump sum and he is not in a position to arrange remaining Rs. 19 lacs and he requires atleast 8 months to discharge his liability.

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

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. 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

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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 respondents in order to save time of the Court and to avoid litigation expenses to be incurred on the part of the respondents, the impugned order dated 21.10.2023 (Annexure P-4) and order dated 20.12.2023 (Annexure P-6) are 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, along with costs of Rs.10,000/- to be deposited with the District Legal Services Authority, Jind, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

February 06, 2024

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No