

255 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-5294-20201 (O&M)
Date of Decision: 13.02.2024

...Petitioner

V/S

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. A.P.S. Rehan, Advocate for
Mr. Mohit Jaggi, Advocate for the petitioner.

Mr. Gagandeep Singh Chhina, AAG Haryana.
None for respondent No. 2.

HARPREET SINGH BRAR J. (Oral)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of order dated 09.10.2019 (Annexure P-4) passed in case No. NACT/887/2016 dated 21.10.2016 titled as **“Ravinder Kumar Vs. Labrej Alam”** under Section 138 of Negotiable Instruments Act 1881, whereby the petitioner was declared as proclaimed person, on the basis that the main case was disposed of by the Court of learned Judicial Magistrate Ist Class, Panchkula vide order dated 15.01.2020 (Annexure P-5), on the basis of compromise.

2. Learned counsel for the petitioner contends that petitioner was accused of offence under Section 138 of Negotiable Instruments Act in case titled as **“Ravinder Kumar Vs. Labrej Alam”** filed vide case No. NACT/887/2016 dated 21.10.2016 and the same was pending before the JMJC, Panchkula. The petitioner was declared as proclaimed person on account of non-appearance before the trial Court on 09.10.2019. The complainant has appeared before the trial Court and has withdrawn the

complaint filed under Section 138 of Negotiable Instruments Act against the petitioner vide order dated 15.01.2020 (Annexure P-5) passed by the Judicial Magistrate Ist Class, Panchkula. Learned counsel further contends that the main offence, on the basis of which the petitioner has been declared as proclaimed person, stands withdrawn by the complainant, as he has already received the cheque amount from the petitioner to his satisfaction.

4. After perusing the record and pleadings, it transpires that once the main complaint under Section 138 of the NI Act, has been withdrawn by the complainant against the petitioner, the proclamation order passed against the petitioner, cannot sustain either.

5. 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 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. Once the impugned order passed under Section 82 Cr.P.C. is found to be suffering from an incurable illegality, the order vide which the proclamation was issued would be liable to be set aside.

7. In view of the discussion made hereinabove, the present petition is allowed and the impugned order dated 09.10.2019 (Annexure P-4) passed in case No. NACT/887/2016 dated 21.10.2016 titled as **“Ravinder Kumar**

Vs. Labrej Alam” along with consequential proceedings arising therefrom
is hereby quashed qua the petitioner only.

13.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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