

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-8141 of 2024
Date of Decision: February 15, 2024

Suba Singh

.....Petitioner

versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Rai Singh Chauhan, Advocate and
Ms. Deepika Chauhan, Advocate
for the petitioner

Mr. Subhash Godara, Addl. A.G. Punjab

Harpreet Singh Brar, J. (Oral)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 17.01.2020 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Ferozepur vide which the petitioner was declared as proclaimed person in complaint case No. NACT-715-18 under Section 138/142 of Negotiable Instruments Act.
2. Learned counsel for the petitioner *inter alia* contends that the petitioner never obtained any amount of Rs. 1,90,000/- as friendly loan and never issued any cheque for alleged amount of Rs. 2,41,000/-. The motive of respondent No. 2 was to usurp the amount by one or the other reasons and thus the complaint was abuse of the process of the Court. The respondent intentionally and deliberately mentioned the wrong address of Rajasthan Feeder, Sub Division, Canal Colony Ferozepur whereas the official address of the petitioner was Irrigation Department Gurditi Wala Head Works, Malan Wala,

District Ferozepur as the petitioner was working there as Baildar and at no point of time any notice was ever served upon the petitioner upon the aforesaid official address. Learned counsel for the petitioner further submits 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. Learned counsel for the petitioner submits that legal notice, summons and proclamation issued to the petitioner were never served as he remain posted in Irrigation Department at Rajasthan Feeder, Sub Division, Canal Colony Ferozepur from 01.01.2022 to 30.09.2022, which has duly been certified by the Sub Divisional Officer, Rajasthan Feeder, Sub Division, Ferozepur, thus, no efforts were ever made for effecting service upon the address either in village or in the official department where he was posted. Ultimately, vide order dated 17.01.2020 (Annexure P-2), the petitioner has been declared as proclaimed person, in result of which, an FIR under Section 174-A of IPC was got registered against him.

3. Notice of motion.

4. Mr. Subhash Godara, Addl. A.G. Punjab who is present in Court, accepts notice on behalf of respondent No.1-State and has not been able to controvert the aforesaid facts.

5. 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.

6. 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 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.

7. 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.

8. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to the respondent No.2 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of respondent No.2 and the impugned order dated 17.01.2020 (Annexure P-2) vide which the petitioner was declared proclaimed person is set aside.

9. 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,

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along with costs of Rs.10,000/- to be deposited with the District Legal Services Authority, Ferozepur for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

February 15, 2024
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No