

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

136-A

CRM-M-9175-2024
Date of Decision: 22.02.2024

SURESH KUMAR PATHAKPetitioner

Versus

UNION OF INDIARespondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Nitin Bhasin, Advocate for the petitioner.

Ms. Meghna Malik, Central Govt. Counsel-UOI
for the respondent.

HARKESH MANUJA, J. (ORAL)

1. By way of present petition filed under Section 482 CrPC, prayer has been made for quashing of impugned order dated 06.12.2023, passed by learned CJM, Chandigarh (Annexure P-7), in criminal complaint No- Coma/6406 of 2019 dated 20.05.2019 title as “Union of India Vs. Unital Formulations and others” whereby the petitioner was declared as proclaimed offender.
2. On a complaint made by respondent, the petitioner was summoned by the Court concerned vide order dated 28.05.2019. On 05.10.2023, the non bailable warrants having been received back unserved, the Court of Chief Judicial Magistrate, Chandigarh issued proclamation under Section 82 of the Code of Criminal Procedure for 06.12.2023 being the date of appearance of the petitioner. The proclamation, in pursuance thereof was effected on 27.10.2023 and on account of non appearance of the petitioner on 06.12.2023, he was declared as proclaimed offender.

3. Impugning the aforesaid order dated 06.12.2023, learned counsel for the petitioner submits that the issuance of proclamation under Section 82 of the Code of Criminal Procedure vide order dated 05.10.2023 was wholly uncalled for as the non bailable warrants issued against the petitioner were received back unserved and as such another effort should have been made for effecting service through non bailable warrants. He further points out that on 05.10.2023 itself the petitioner even moved an application before the trial Court for the purpose of surrender and grant of bail, though the same was received by the Court staff, however, was never entertained in wake of order dated 05.10.2023. He also submits that as soon as the petitioner came to know about the initiation of proceedings under Section 82 of the Code of Criminal Procedure against him he approached this Court while assailing the order dated 05.10.2023 by way of CRM-M-54845-2023 (O&M), CRM-M-55236-2023 (O&M), CRM-M-57730-2023 (O&M) and CRM-M-57737-2023 (O&M) wherein vide order dated 06.12.2023, the petitioner was directed to surrender before the trial Court on the same day. Learned counsel again points out that as the order dated 06.12.2023, was uploaded late on the day, the petitioner though having represented himself before the trial Court concerned was not marked presence for want of order in this regard and was verbally directed to appear on the next date.

4. On the other hand, prayer made herein has been vehemently opposed by the learned counsel representing the respondent while submitting that despite the petitioner having complete knowledge about the pendency of the complaint as well as passing of the order dated 05.10.2023, chose not to present himself before the trial Court concerned

and as such the impugned order warrants no interference. He further submits that despite having been granted an opportunity to present himself before the Court concerned in terms of the order dated 06.12.2023, passed by this Court, the petitioner still evaded his appearance.

5. I have heard learned counsel for the parties and gone through the paper book. I find substance made on behalf of the petitioner.

6. Perusal of the order dated 05.10.2023, clearly shows that though the non bailable warrants were received back unserved, yet without recording anything to the effect that service of non bailable warrants upon the petitioner was on account of any malafide attributable to him, proclamation under Section 82 of the Code of Criminal Procedure was ordered against him which could have been avoided and the Court concerned could have made another attempt to serve the petitioner through non bailable warrants.

7. Further, from the records it appears that the intent of the petitioner was not to evade his appearance, as an application for surrender and grant of bail was duly presented before the Court on the same day i.e. 05.10.2023 which despite having been received by the Court staff, somehow on account of bonafide oversight, could not be entertained by the officer concerned. Furthermore, having approached this Court so as to assail the order dated 05.10.2023; vide order dated 06.12.2023, the petitioner was permitted to surrender before the trial Court on the same day, however, on account of practical difficulty faced by the petitioner, in the wake of uploading of the said order, late in the day, the petitioner could not present himself before the trial Court; which cannot by any stretch of imagination attribute any malafide on his part.

8. Resultantly, in view of the discussion made hereinabove, the petition is allowed. Orders dated 05.10.2023 and 06.12.2023 passed by the trial Court are hereby quashed and the trial Court is requested to permit the petitioner to surrender and furnish bail bonds/surety bonds to its satisfaction within a period of 07 days from today. Till then no coercive steps be taken against the petitioner.

22.02.2024
pry

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>