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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-12430-2024

Date of decision: 11.03.2024

Manjit Singh

....Petitioner

Versus

Madan Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Khushkaran K. Goyal, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of impugned order dated 19.05.2023 (Annexure P-12) and all other subsequent proceedings passed by the learned Judicial Magistrate 1st Class, Rajpura vide which the petitioner was declared as proclaimed person in a complaint case bearing No. NACT/5169/2020 dated 15.07.2020 under Section 138 read with 142 of the Negotiable Instruments Act, 1881 (in short ‘the Act’) titled as ‘*Madan Lal Vs. Manjit Singh.*’

2. Learned counsel appearing for the petitioner, *inter alia*, contends that a complaint under Section 138 read with Section 142 of the Act was filed against the petitioner on the ground of dishonouring of cheque bearing No. 275086 dated 13.02.2020 amounting to Rs.2,00,000/- issued in favour of the complainant/respondent by the petitioner in discharge of his liability. In the meanwhile, the parties have compromised orally before the learned trial Court, Chandigarh, in Rs.1,30,000/- and the same has been observed by the learned trial Court vide order dated 05.01.2023 and the petitioner promised to pay the

entire amount in instalments. On 25.01.2023, the petitioner has paid his first instalment of Rs.50,000/- to the respondent before the learned trial Court and the matter was adjourned for 27.02.2023. On 27.02.2023, the petitioner has requested the learned trial court to fix the further date which was duly accepted. On 10.03.2023, one of the family members of the petitioner got unwell and, therefore, he was unable to appear before the learned trial Court and due to his non-appearance, the learned trial Court has forfeited the bail bonds/surety bonds of the petitioner and secured his presence through non-bailable warrants for 10.04.2023. On 10.04.2023, the learned trial Court issued proclamation against the petitioner for 19.05.2023. On 19.05.2023, the trial Court declared the petitioner as proclaimed person. Aggrieved by the said impugned order dated 19.05.2023 (Annexure P-12), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the non-bailable warrants issued to the petitioner were never served and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Further, the trial Court vide order dated 10.04.2023 without observing any cogent reason, issued proclamation against the petitioner for 10.04.2023. Ultimately, vide impugned order dated 19.05.2023, the petitioner has been declared as proclaimed person. It is contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court.

4. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

5. I have heard learned counsel for the petitioner and perused the record

of the case with his able assistance and the matter is taken up for final disposal.

6. 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.

7. 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 (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. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity.

8. 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.

9. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to the respondent in order to save time of the Court and to avoid litigation expenses to be incurred on the part of respondent, the impugned order dated 19.05.2023 (Annexure P-12) vide which the petitioner was declared as proclaimed person, is hereby set aside.

10. The petitioner is directed to appear before the trial Court within a period of two weeks 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 Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

11.03.2024
Neha

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