

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8631-2023

Date of Decision: February 08, 2024

SUMIT ARRYPetitioner
Versus
STATE OF PUNJAB AND ANOTHERRespondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sunil Agnihotri, Advocate for the petitioner.
Mr. Gurlal Singh Dhillon, AAG, Punjab.
Mr. Luvraj Dhindsa, Advocate for respondent No.2.

HARKESH MANUJA, J. (ORAL)

1. By way of present petition filed under Section 482 CrPC, prayer has been made for setting aside the order dated 04.11.2022 passed by the Judicial Magistrate First Class, Dasuya whereby the petitioner was declared as proclaimed person having been arrayed as an accused in complaint No.43 dated 02.03.2021 filed under Section 138 of Negotiable Instruments Act, 1881.
2. In the present case, the petitioner on account of his non-appearance in pursuance to summoning order dated 02.03.2021 was declared as proclaimed person vide order dated 04.11.2022.
3. Assailing the aforesaid order, learned counsel for the petitioner submits that the proceedings under section 82 of CrPC were never conducted against the petitioner in accordance with the mandate of the statutory provision as no clear cut 30 days' period was ever afforded to the petitioner to put in appearance in pursuance to proclamation and thus, the impugned order was liable to be set aside.

4. On the other hand, learned State counsel assisted by learned counsel for respondent No.2 vehemently opposes the prayer made in the petition while submitting that the petitioner despite having knowledge about pendency of the proceedings chose not to submit himself to the jurisdiction of the Court and thus the impugned order warrants no interference.

5. I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made by learned counsel for the petitioner.

6. In the present case, proclamation under Section 82 of CrPC was issued vide order dated 24.08.2022 for 04.10.2022, being the date of appearance of petitioner, however, as the statutory period of 30 days as provided under Section 82 of CrPC was not completed, the matter was adjourned for 04.11.2022 for the appearance of the petitioner. The orders dated 24.08.2022 and 04.10.2022 are reproduced hereunder for reference:-

Order dated 24.08.2022:-

“Non-bailable warrants of accused received back unserved with the report that he is not found at the given address. This court is satisfied that accused is intentionally hiding himself so that he cannot be served. In view of the report on the summons, let proclamation under Section 82 CrPC be issued against the accused for 04.10.2022.”

Order dated 04.10.2022:-

“Proclamation warrant issued against the accused received back duly effected. Statement of serving constable also recorded. Statutory period of 30 days has not been elapsed. Now matter is adjourned to 04.11.2022 for awaiting the appearance of accused.”

7. A perusal of the aforementioned orders show that the proclamation issued on 24.08.2022 for 04.10.2022, from the date of its publication fell short of statutory period of 30 days and therefore the proceedings were adjourned for 04.11.2022 for putting appearance by the petitioner, however, once no proclamation was ever effected for 04.11.2022, the petitioner could not have been declared as proclaimed person for the said date.

8. Resultantly, the order dated 04.11.2022 passed by learned Judicial Magistrate First Class, Dasuya whereby the petitioner was declared as proclaimed person is hereby set aside.

9. In view thereof, petitioner is directed to appear before the trial Court within a period of 10 days from today and in case of his doing so, he shall be released on bail on his furnishing adequate bail bonds/surety bonds along with an affidavit of assurance that he shall continue to appear before the trial Court unless granted exemption specifically to its satisfaction. Till then no coercive steps shall be taken against him. However, the aforesaid order shall be subject to payment of costs of Rs.10,000/- to be paid to the complainant.

08.02.2024
Tejwinder

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No