

125

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10300-2024

Date of decision : 27.02.2024

Amarpal Singh

...Petitioner

Versus

UT Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present : Ms. Promila Nain, Advocate
for the petitioner.

Mr. P.S. Paul, Addl. P.P. for
UT, Chandigarh.

HARKESH MANUJA, J. (ORAL)

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of impugned order dated 23.12.2022 passed by the Judicial Magistrate 1st Class, Chandigarh, whereby the petitioner was declared proclaimed person.
2. Having been arrayed as an accused in Complaint No. 6415 of 2020 dated 21.09.2020 under Section 138 of the Negotiable Instruments Act, followed by issuing of summoning order, the petitioner , on account of his non-appearance was declared as proclaimed person by the trail Court vide dated 23.12.2022.
3. Impugning the aforesaid order, learned counsel for the petitioner submits that the proceeding was carried out against the petitioner in violation of the mandatory procedure laid down under Section 82 in the

Code of Criminal Procedure and thus order dated 23.12.2022 was liable to be set aside.

4. Notice of motion.

5. Mr. P.S. Paul, Addl. P.P. for UT, Chandigarh, accepts notice on behalf of respondent No.1. At this stage, notice upon respondent No. 2 may not be required as the declaration of petitioner as proclaimed person primarily relates to his non-appearance before the Court concerned in pursuance of the summoning order.

6. The prayer made on behalf of the petitioner has been vehemently opposed by learned State counsel while submitting that there was no infirmity in the proceedings carried out by the trial Court in declaring the petitioner as proclaimed person as the proclamation was duly effected in terms of Section 82 of the Code of Criminal Procedure and thus, the impugned order warrants no interference.

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

8. In the present case, the proclamation under Section 82 Cr.P.C. was ordered on 17.10.2022 for 02.12.2022 being the date for appearance of petitioner, however, as the proclamation was effected on 22.11.2022, the trial Court deferred the hearing of the case for appearance of petitioner to 23.12.2022, when on account of his absence, he was declared proclaimed person.

9. A perusal of record shows that no proclamation under Section 82 Cr.P.C. was ever ordered or effected by the Court concerned for

23.12.2022 being the date for appearance of the petitioner and as such on account of absence on 23.12.2022, the petitioner could not have been declared proclaimed person on 23.12.2022.

10. Thus, in view of the above submissions, the impugned order is in violation of the mandate of Section 82 Cr.P.C. which requires that for appearance, 30 days period should be granted to an individual, from the date of publication against whom the proclamation has been effected. In the given facts, the same has not been complied with and therefore the impugned order is hereby set aside.

11. Resultantly, the petition is allowed. However, subject to payment of Rs. 20,000/- to respondent No.2/complainant at the time of appearance before the trial Court. The petitioner shall surrender himself before the trial Court within a period of 07 days and furnish his bail/surety bonds which shall be accepted subject to the satisfaction of concerned Court.

12 In the meanwhile, no coercive action shall be taken against him.

(HARKESH MANUJA)
JUDGE

27.02.2024
monika

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