

CRM-M-9783-2024
Date of decision: 23.02.2024

PRAKASH KUMAR GUPTA ALIAS MINTU ALIAS PRASHURAM KUMAR

...PETITIONER

V/S

CHATAR SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: None.

HARPREET SINGH BRAR J. (ORAL)

The present petition has been filed under Section 482 of Cr.P.C. seeking quashing of impugned orders dated 22.12.2022 (Annexure P-4) and 08.02.2023 (Annexure P-5) passed by learned JMIC Faridabad, in case bearing No.NACT-5829 of 2017 dated 20.11.2017 under Section 138 of Negotiable Instruments Act registered at Police Station Sarai Khawaja, District Faridabad, whereby the petitioner has been declared as ‘proclaimed person’.

2. Brief facts of the case, as per the prosecution are that the petitioner had asked for a personal loan from respondent for the purpose of construction of house, which was given by complainant to accused/petitioner in cash amount of Rs.7,00,000/- in October 2016 and for the repayment of cash loan, the petitioner issued cheque No.000002 dated 24.10.2017 amounting to Rs.7,00,000/- drawn on HDFC Bank Noida but when the complainant presented the cheque in IDBI Account, Faridabad, the same was returned dishonoured vide return memo 26.10.2017, thereafter, a legal notice dated 30.10.2017 was sent to the petitioner but he was unable to pay the amount. Hence, the present FIR was registered.

3. In view of the resolution passed by Bar Association of Punjab and Haryana High Court, there is no representation on behalf of the petitioner.

4. A perusal of the pleadings shows that notice sent through registered post was received back unserved and furthermore, theailable warrants issued against the petitioner also could not be executed. Thereafter, non-ailable warrants were issued for 22.12.2022 and the same also could not be executed. Mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court. It is also submitted in the pleadings that the petitioner undertakes to appear before the trial Court on each and every date.

5. Notice of motion.

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 (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.

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, the impugned orders dated 22.12.2022 (Annexure P-4) and 08.02.2023 (Annexure P-5) passed by learned JMIC Faridabad, vide which, the petitioner was declared as proclaimed person are quashed.

10. The petitioner is directed to appear before the trial Court within a period of 02 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 Patients Welfare Funds, PGIMER, Chandigarh, for wasting precious time of the Court.

February 23, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |