2024:PHHC:032640

120 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-11706-2024
Date of decision: 06.03.2024

Jaswinder Singh ....Petitioner

Versus

State of U.T. Chandigarh and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Munish Bhardwaj, Advocate
for the petitioner.

Mr. Manish Bansal, P.P., with
Mr. Ankush Singla, Advocate
for respondent No.1-U.T. Chandigarh.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 19.12.2023 (Annexure P-11) passed by the learned Judicial Magistrate 1st Class, U.T. Chandigarh in criminal complaint i.e. NACT-3422 dated 03.05.2016 titled as '*Anil Sharda Vs. Jaswinder Singh Riar*' filed by respondent No.2 under Sections 138 & 142 of the Negotiable Instruments Act, 1881 (in short 'the Act') vide which the petitioner has been declared as proclaimed person.

2. Learned counsel appearing for the petitioner, *inter alia,* contends that a complaint under Sections 138 & 142 of the Act was filed against the petitioner on the ground of dishonouring of cheque bearing No.231966 dated 31.12.2015 amounting to Rs.6,90,000/- issued in favour of the complainant/respondent No.2 by the petitioner in discharge of his liability. The

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petitioner was summoned under Section 138 of the Act vide summoning order dated 21.07.2016 and it is submitted that petitioner has not received any summons. He further submits that respondent No.2 has also made a complaint to the police on the same set of allegations on the basis of which, FIR No.48 dated 05.03.2017 under Sections 406/420/466/467/468/471/120-B of IPC has been registered at Police Station City Kharar, District SAS Nagar Mohali and aggrieved by this, the petitioner has filed CRM-M-4361-2018 in this Court. Vide order dated 08.12.2018, this Court issued notice of motion and directed the trial Court to adjourn the proceedings beyond the date fixed. Thereafter, the case was adjourned and ultimately it came up for hearing before this Court on 04.09.2023 and the same was dismissed. Thereafter, the case was fixed for 05.10.2023 before the learned trial Court. Counsel for the petitioner filed an application for exemption from personal appearance of the petitioner only for that day which was allowed and the case was adjourned for 12.10.2023. On 12.10.2023, neither the counsel for the petitioner nor the petitioner appeared before the learned trial Court due to some personal difficulty and on account of his absence, his bail was cancelled and his presence was secured through issuance of non-bailable warrants. On 27.10.2023, the trial Court issued proclamation under Section 82 of Cr.P.C. against the petitioner for 08.12.2023. On 19.12.2023, the trial Court declared the petitioner proclaimed person Aggrieved by the said impugned order dated 19.12.2023 (Annexure P-11), 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

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erroneous. Further, the trial Court vide order dated 27.10.2023 observed that since non-bailable warrants have not been executed till date, he cannot be served through ordinary process and issued proclamation under Section 82 Cr.P.C.. Ultimately, vide impugned order dated 19.12.2023, 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. Notice of motion.

6. Mr. Manish Bansal, P.P., with Mr. Ankush Singla, Advocate for respondent No.1-U.T. Chandigarh, who is present in Court, accepts notice for respondent No.1 and supports the order passed by the learned trial Court by contending that the petitioner did not put in appearance before the trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure his presence.

7. I have heard learned counsel for the parties and perused the record of the case with their able assistance and with the consent of parties, the matter is taken up for final disposal.

8. 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

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suffer from the vice of arbitrariness or unreasonableness.

9. 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.

10. 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.

11. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to respondent No.2 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of respondent No.2 and the impugned order dated 19.12.2023 (Annexure P-11) vide which the petitioner was declared proclaimed person is set aside.

12. The petitioner is directed to appear before the trial Court within a period of 15 days from today and on his doing so, he shall be admitted to bail

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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

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

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