

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

152

CRM-M No.13718 of 2024
Date of Decision: 02.05.2024

FATEH CHANDPetitioner

Vs

SATYAWAN AND ANOTHERRespondents

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. B.S. Mamli, Advocate
for the petitioner.

Mr. Deepak Kumar, Advocate
For respondent No.1.

Mr. Gurmeet Singh, Asstt. A.G., Haryana
for respondent No.2.

HARKESH MANUJA, J. (Oral)

- [1]. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of order dated 09.11.2023 passed by the Judicial Magistrate Ist Class, Fatehabad vide which the petitioner was declared as proclaimed person relating to Criminal Complaint No.NI/148/2020 dated 23.01.2020 filed by respondent No.1/complainant.
- [2]. Briefly stating, petitioner having been arrayed as an accused in a complaint filed under Section 138 of the Negotiable Instruments Act at the instance of respondent No.1/complainant was summoned by the Trial Court vide order dated 19.02.2020. On account of non-appearance of the petitioner, he was declared as proclaimed person vide order dated 09.11.2023 passed by the Judicial Magistrate Ist Class, Fatehabad.

[3]. Impugning the aforementioned order, learned counsel for the petitioner submits that the declaration of the petitioner as proclaimed person was not in conformity with the mandate of Section 82 Cr.P.C., besides in terms of settlement having been arrived at between the parties, now the complaint stands withdrawn at the instance of respondent No.1/complainant and, thus, continuation of proceedings in pursuance of impugned order as well as the FIR in question would amount to abuse of process of law. Moreover, learned counsel for the petitioner on instructions from his client, submit that he volunteers to serve public cause by providing one ECG Machine and one wheelchair of superior quality to Civil Hospital, Fatehabad.

[4]. Learned State counsel vehemently opposes the prayer made on behalf of the petitioner while submitting that the petitioner despite having knowledge of pendency of proceedings under Section 138 of the N.I. Act as well as summoning order, deliberately chose not to appear before the Trial Court resulting into his declaration as proclaimed person followed by registration of FIR against him and, thus, the impugned order as well as the FIR do not warrant any interference.

[5]. On the other hand, learned counsel representing respondent No.1/complainant admits the factum of settlement arrived at between the parties and states that the complaint filed at his instance stand withdrawn vide order dated 09.03.2024 passed by the Presiding Officer, National Lok Adalat-cum-JMIC, Fatehabad.

[6]. 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.

[7]. In the present case, the proclamation under Section 82 Cr.P.C., was effected on 25.09.2023 and in his statement recorded before the Trial Court, the executant police officer nowhere records that the said proclamation was ever read out publically in terms of 82(2)(i)(a) Cr.P.C. The translated version of statement made by the executant police officer reads as under:-

“Sir,

For affecting service of proclamation notice upon Fateh Chand s/o Mohan Lal resident of H.No.14 D1/123, Rama Vihar received on 13.09.2023, I, EASI went at given address on 21-09-23 and inquired about Fateh Chand, who was not found at his house which was found locked. His neighbourers Vikas son of Pala Ram and Krishan son of Mohan Lal told that he does not reside here for the long time. A copy of notice is pasted on the given address, second copy is pasted on the common wall outside in a public place and munadi was done through the loudspeaker of temple. Third copy is pasted on the notice board of the Court and fourth copy along with the reports is presented in Court.”

*EASI Rajinder Kumar
140217
Dt.25-9-23”*

[8]. In view of above, once the declaration of petitioner as proclaimed person was not in consonance with the mandate of Section 82 Cr.P.C., the impugned order becomes unsustainable in law. Moreover, the parties have already entered into a settlement and the complaint filed at the instance of respondent No.1/complainant stands withdrawn in terms of order dated 09.03.2024 passed by the Presiding Officer, National Lok Adalat-cum-JMIC, Fatehabad.

[9]. In view of discussion made hereinabove, the present petition is allowed, subject to providing one ECG Machine and one wheelchair of superior quality to Civil Hospital, Fatehabad, within a period of two weeks from today as volunteered by the petitioner against due receipt issued by the concerned Civil

Surgeon, who shall prepare an inventory in this regard for its regular inspection by the Director concerned. A copy of the receipt shall also placed before the concerned Trial Court. Consequently, the order dated 09.11.2023 passed by the Judicial Magistrate Ist Class, Fatehabad declaring the petitioner as proclaimed person is set aside.

May 02, 2024

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Whether speaking/reasoned

Whether reportable

(HARKESH MANUJA)

JUDGE

Yes/No

Yes/No