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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17849-2024
Date of decision: 10.04.2024

Kissan Poultries Feeds and Another

...Petitioners

Versus

State of Punjab and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Lupil Gupta, Advocate for the petitioner.

KARAMJIT SINGH, J. (ORAL)

1. At the outset, the counsel for the petitioner while limiting his arguments submits that in the present petition even criminal complaint NACT-139/2022 titled M/s Sanjiv Industries Vs. M/s Kissan Poultry Feeds and another under Section 138 NI Act (Annexure P-1) is also challenged, but he is not pressing for the relief seeking quashing of the said complaint Annexure P-1, at this stage.
2. The present petition has been filed by the petitioner seeking quashing of the impugned order dated 02.02.2023 (Annexure P-3) whereby the petitioner has been declared as proclaimed person by the Court of learned Sub Divisional Judicial Magistrate Khanna in criminal case complaint No.NACT-139/2022 titled M/s Sanjiv Industries Vs. M/s Kissan Poultry Feeds and another under Section 138 NI Act.

3. The counsel for the petitioner, *inter alia*, contends that the impugned order is not passed by the learned trial Court in accordance with the provisions of Section 82 Cr.P.C. as per which 30 days clear period is to be given to the accused person to appear in the Court concerned from the date of publication of proclamation. The counsel for the petitioner further submits that in the present case, the proclamation of accused was issued by the learned trial Court for 05.01.2023 vide order dated 30.11.2022 and proclamation was published on 19.12.2022 as is evident from Annexure P-2 (collectively), with direction to the petitioner to appear before the Court concerned on 05.01.2023. Thus it is apparent that the required statutory period of 30 days was not provided by the learned trial Court for the purpose of appearance of the petitioner. It is further submitted that offence under Section 138 NI Act is a bailable offence and that the petitioner is ready to join the proceedings before the trial Court.

4. Notice of motion.

5. Mr. J.S. Dhaliwal, AAG Punjab accepts notice on behalf of respondent No.1-State and submits that the impugned order was passed by the learned trial Court in a private criminal complaint filed under Section 138 NI Act and that there is no illegality or perversity in the impugned order

6. I have considered the submissions made by counsel for the parties.

7. Admittedly, proclamation of the petitioner under Section 82 Cr.P.C. was issued by the learned trial Court vide order dated 30.11.2022 and as per said proclamation, the petitioner was directed to appear in the Court concerned on 05.01.2023 and from the perusal of Annexure P-2, it

appears that the said proclamation was published on 19.12.2022 with direction to the petitioner to appear before the Court concerned on 05.01.2023. Vide order dated 05.01.2023, the case was adjourned to 02.02.2023 for awaiting presence of petitioner. However, no intimation with regard to passing of order dated 05.01.2023 was given to the petitioner. Thus, making it clear that in the present case 30 days statutory period as prescribed in Section 82 Cr.P.C. was not given to the petitioner for his appearance before the Court concerned from the date of publication of proclamation. So, it is evident that the impugned order Annexure P-3 was passed in contravention of the provisions of Section 82 Cr.P.C, as has been held by this Court in *Ashok Kumar Vs. State of Haryana & Anr. 2013 (4) RCR (Crl.) 550*.

8. In light of above discussion, the impugned order Annexure P-3 is hereby set aside. The present petition stands disposed of in aforesaid terms.

10.04.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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