

**135 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Neutral Citation No. 2024:PHHC:053706
CRM-M-19457-2024
Date of Decision: April 22, 2024**

Gursewak Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sukhmeet Singh, Advocate for the petitioner.

DEEPAK GUPTA, J.(Oral)

By way of this petition filed under Section 482 Cr.P.C. to quash the order dated 06.12.2023 (Annexure P-14) passed by learned Judicial Magistrate 1st Class, Moga, in a complaint case No.425 of 2022, titled as ***“Sukhmander Singh v. Gursewak Singh”***, under Sections 138 and 142 of the Negotiable Instruments Act, 1881 and Sections 420 of IPC, whereby petitioner has been declared as proclaimed person.

2. Contention of learned counsel for the petitioner is that 30 days period was not granted to the petitioner, so as to surrender/appear before the Trial Court concerned, as per Section 82 Cr.P.C.

3. A perusal of the various zimini orders as placed on record by the petitioner, would reveal that summoning order was passed on 13.07.2022. The order dated 22.02.2023 (Annexure P-8) would reveal that summons were sent to the petitioner through registered post, but despite lapse of 30 days period, the registered envelope containing the summons was not received back thus raising the presumption of service. In the circumstances, bailable warrants were directed to be issued for 29.04.2023.

Annexure P-9 is the order dated 29.04.2023, revealing that bailable warrants

were received back duly executed, despite which petitioner failed to appear before the Court. It is thus clear that the petitioner was well aware about the prosecution of the case, but failed to appear. At the same time, it is revealed that vide order dated 12.10.2023 (Annexure P-12), proclamation under Section 82 Cr.P.C. were directed to be issued with the direction to the petitioner to surrender on or before 07.11.2023. The said proclamation was received duly served as per the order dated 07.11.2023 (Annexures P-13). The matter was adjourned to 06.12.2023 and then by way of the impugned order dated 06.12.2023 (Annexure P-14), petitioner was declared proclaimed person. It is thus clear that though the proclamation was for 07.11.2023, but by that time, the period of 30 days was not elapsed, so the petitioner could not have been declared proclaimed person on that date; whereas on 06.12.2023, when the petitioner was declared proclaimed person, there was no proclamation or direction to the petitioner to appear before the Court on that date.

4. In the aforesaid circumstances, the impugned order dated 06.12.2023 (Annexure P-14) is held to be in violation of Section 82 Cr.P.C. and as such, the said order is set aside. At the same time, having regard to the conduct of the petitioner, who had not appeared before the Court despite having notice of the complaint, this petition is hereby accepted, subject to payment of cost of ₹10,000/- to be deposited with the District Legal Services Authority, Moga.

April 22, 2024
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(DEEPAK GUPTA)
JUDGE

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