

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

272

CRM M-22924 of 2023
Date of Decision: 05.03.2024

Jaskaran Singh ...Petitioner
Versus
State of Punjab and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Armaan Gagneja, Adovcate
for the petitioner (through V.C.).

Mr. Jasjeet Singh, DAG, Punjab.

Mr. Sourabh Bhardwaj, Advocate, for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition with a prayer to set aside the order dated 05.01.2023 (Annexure P-10), whereby, the petitioner has been declared as a proclaimed offender in a complaint case No. NACT-374-2021, titled as “**HDFC Bank Ltd. Vs. Jaskaran Singh**”, which was filed by the respondent No. 2 under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**').
2. Learned counsel for the petitioner contends that a complaint under Section 138 of the Act was filed against the petitioner by respondent No. 2/complainant-bank. Vide order dated 13.09.2021 (Annexure P-1), the Court of Judicial Magistrate 1st Class, Sri Mukatsar Sahib summoned the petitioner to face the trial under

Section 138 of the Act. Learned counsel further contends that no notices/summons were served upon the petitioner and the petitioner was not aware of any proceedings pending against him. Even, the summons were never served on the petitioner. Consequently, he could not appear before the trial Court to face the trial proceedings. Vide order dated 29.04.2022 (Annexure P-3), the petitioner was summoned through bailable warrants for 06.06.2022. On 06.06.2022 and 18.08.2022, the non-bailable warrants were issued against the petitioner. However, the warrants were also never served on the petitioner. Vide order dated 23.09.2022 (Annexure P-5), the petitioner was ordered to be summoned through proclamation as per the provisions of Section 82 of Cr.P.C., for 07.10.2022. On 07.10.2022, the proclamation issued against the accused was received back unexecuted and the fresh proclamation was issued against the petitioner for 10.11.2022. Since, the proclamation could not be issued against the petitioner, vide order dated 10.11.2022, fresh proclamation was issued for 13.12.2022. On 13.12.2022, the statement of serving constable was recorded and he stated that he had gone to the house of the petitioner on 02.12.2022 and had pasted one copy of proclamation on the main gate of the house of the petitioner. The copies were also affixed at a conspicuous place of the village of the petitioner as well as on the notice board of the Court. However, the period of 30 days after the proclamation had not yet expired. The case was adjourned to 05.01.2023 for awaiting the presence of the petitioner. Learned

counsel further submitted that since the mandatory period of 30 days was not provided to the petitioner to appear before the Court, the impugned order was illegal and unjust.

3. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner. However, he could not dispute the above referred chronology of events and the orders passed by the trial Court before declaring the petitioner as proclaimed offender.

4. I have heard learned counsel for the parties and perused the record.

5. Section 82(1) Cr.P.C., 1973 mandates that a period of not less than 30 days has to be provided for causing appearance from the date of publication of such proclamation. This Court in **Ashok Kumar v. State of Haryana 2013(4) RCR (Criminal) 550** while interpreting the provisions of Section 82(1) has held that a clear period of 30 days is required to be furnished to the accused and that even in case the Court subsequently adjourned the matter such adjournment beyond 30 days cannot be treated as compliance of provisions of Section 82(1) Cr.P.C., 1973. The relevant extract from the cited judgment reads as follows:-

"4. In view of the above provisions of Section 82(1) Cr.P.C., 1973 it is clear that the publication was effected on 9.2.2013 and the accused was directed to appear in

the Court as per that publication on 6.3.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned order on 13.3.2013, the publication has been effected as per the provisions of Section 82 Cr.P.C., 1973. There was no order in the publication for the accused giving specified time and place to appear on 13.3.2013. Therefore, this order is not as per law and the same is set aside."

6. In view of the above factual position, it is apparent that the proclamation in the present case was issued on 02.12.2022 for appearance before the Court on 13.12.2022 and only a period of 11 days was afforded for causing appearance before the trial Court, after the proclamation was affixed. Thus, in view of the mandatory provisions of Section 82 Cr.P.C., the impugned order dated 05.01.2023 (Annexure P-10) passed by the Judicial Magistrate 1st Class, Sri Mukatsar Sahib is hereby set aside and the petition is allowed.

7. Since, the petitioner has not appeared before the trial Court, he is directed to appear before the trial Court within a period of six weeks from today.

8. Needless to say, the petitioner shall be at liberty to apply for grant of bail in terms of the provisions contained in Chapter XXXIII of the Code of Criminal Procedure.

9. Since the complaint was filed by the respondent No.2/complainant, in August 2021, the trial Court is directed to conclude the trial expeditiously, preferably within a period of 08 months from today.

05.03.2024

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No