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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-22328 of 2024(O&M)
Date of Decision: 09.05.2024

Shisha Singh
Versus
Uppal Tyres-MRF Tyres & Service Franchise

...Petitioner
...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Janak Singh Bhinder, Advocate
For the petitioner.

KARAMJIT SINGH, J.

1. The present petition has been filed by petitioner seeking quashing of order dated 01.04.2024 (Annexure P-13) passed by the Court of Judicial Magistrate Ist Class, Samana vide which the petitioner was declared as proclaimed person in criminal complaint NACT No. 247 of 2021 titled as Uppal Tyres-MRF Tyres Vs. Shisha Singh under Section 138 of Negotiable Instruments Act (for brevity, NI Act).
2. The counsel for the petitioner submits that the petitioner is falsely implicated in the aforesaid criminal complaint and he was not aware about the pendency of the same. It is further submitted that the impugned order was passed in contravention of the mandatory provisions of Section 82 Cr.P.C. as clear 30 days period was not given to the petitioner to appear before the Court concerned with effect from the date of publication of proclamation as is evident from Annexure P-9 to Annexure P-13. The counsel for the petitioner further submits that it being so the impugned order

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Annexure P-13 is not sustainable and deserves to be quashed. In this regard counsel for the petitioner has placed reliance upon decision of this Court in **Ashok Kumar Vs. State of Haryana & Anr. 2013(4) RCR(CrL.) 550**. The counsel for the petitioner further submits that otherwise also offence under Section 138 of NI Act is a bailable offence and the petitioner is ready to join the proceedings before the learned trial Court.

3. I have considered the submissions made by counsel for the petitioner.

4. From a perusal of the documents Annexure P-9 to P-13 which are referred by counsel for the petitioner, it appears that the learned trial Court issued proclamation of the petitioner under Section 82 Cr.P.C. for 02.02.2024 vide order dated 07.10.2023 (Annexure P-9). From the perusal of Annexure P-13 it is evident that the said proclamation was effected on 22.01.2024 against the petitioner with direction to him to appear before the Court concerned on 02.02.2024. Thus, in the present case the procedure prescribed under Section 82 Cr.P.C. has not been complied with and in fact clear period of 30 days as mandated under Section 82 Cr.P.C. has not been afforded to the petitioner in order to appear before the Court concerned with effect from the date on which proclamation was published against the petitioner. Thus, in the light of ratio laid down by this Court in Ashok Kumar's case (supra) the impugned order being illegal deserves to be set aside.

5. In light of the above, without expressing any opinion on the merits of the case, the present petition is allowed and impugned order (Annexure P-13) is set aside. The petitioner is directed to appear before the

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trial Court within next two weeks and to seek regular bail as offence under Section 138 of NI Act is a bailable one.

6. Keeping in view the nature of order being passed, the instant petition is disposed of without issuance of any notice to the respondent. However, if the respondent is aggrieved of this order, he may file an application to recall the same.

09.05.2024
Jiten

(KARAMJIT SINGH)
JUDGE

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