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

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Date of decision: 31.05.2024

Baljinder Singh Brar

...Petitioner

Versus

M/s PKF Finance Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Harsh Gupta, Advocate for
Mr. VPS Mithewal, Advocate for the petitioner.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner seeking setting aside of the impugned order dated 16.03.2024 (Annexure P-7) vide which the petitioner was declared as proclaimed offender by the Court of Judicial Magistrate Ist Class, Jalandhar in a complaint NACT No.22920-2022 titled PKF Finance Limited Vs. Baljinder Singh Brar.

2. The counsel for the petitioner submits that the petitioner never got any notice, summons or warrants issued by the Court concerned regarding pendency of the aforesaid complaint. It is further submitted that wrong address of the petitioner was given in the criminal complaint. That actually, at the relevant time, petitioner was residing in Flat No.860, Shivalik Society, Sector 49-A, Chandigarh, as is evident from (Annexure P-8). The counsel for the petitioner while referring to (Annexure P-4) and (Annexure P-5) submits that the learned trial Court wrongly initiated proceedings under Section 82 Cr.P.C. without recording the satisfaction



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that petitioner has absconded or is concealing himself and thus, the impugned order is liable to be set aside. In support of his contentions, the counsel for the petitioner has referred to decision of co-ordinate Bench of this Court in ***Arjun Bhanot Vs. State of Punjab and another 2024 (1) RCR (Criminal) 371.***

3. The counsel for the petitioner has further submitted that the petitioner is ready and willing to join the proceedings before the trial Court at the earliest and that the offence punishable under Section 138 NI Act is a bailable offence. So, prayer is made that the impugned order be set aside with permission to the petitioner to join the proceedings in the trial.

4. Notice of motion.

5. Mr. J.S. Dhaliwal, AAG, Punjab, accepts notice on behalf of the State and has submitted that in the present case dispute is between two private parties. That otherwise there is no illegality in the impugned order.

6. I have considered the submissions made by counsel for the petitioner and the State counsel.

7. The only purpose of issuance of bailable/non bailable warrants or to resort to proceedings under Section 82 Cr.P.C. is to secure presence of the accused before the trial Court. In the instant case, the petitioner has himself come forward and has shown his willingness to join the proceedings before the trial Court. Further from the perusal of the record, it appears that before initiating proceedings under Section 82 Cr.P.C, the trial Court did not record its satisfaction to the effect that the petitioner was absconding or concealing himself so that warrant of arrest issued against him could not be executed. A court is required to exhibit total application of mind to arrive at

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a definite finding regarding abscondence of an accused person.

8. It follows that petitioner was wrongly declared proclaimed person vide impugned order (Annexure P-7) in breach of the prescribed procedure and thus, the impugned order (Annexure P-7) is liable to be set aside along with all consequential proceedings arising therefrom.

9. In light of the above discussion, the petition is allowed and impugned order (Annexure P-7) dated 16.03.2024 passed by the Court of Judicial Magistrate Ist Class, Jalandhar is quashed.

10. The petitioner is directed to appear before the learned trial Court within 10 days and to seek regular bail in the criminal complaint titled M/s PKF Finance Limited Vs. Baljinder Singh Brar filed under Section 138 NI Act, which is a bailable offence.

11. Keeping in view the nature of order being passed, no notice is required to be issued to respondent No.1. However, if he feels dis-satisfied with this order, he may move an application to recall the same.

31.05.2024

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-

Whether reportable:-

Yes/No

Yes/No