



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

329

CRM-M-33851-2024
Decided on: 13.08.2024.

Bawa Harbans Singh through Special Power of Attorney ...Petitioner

Versus

State of Punjab and Another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Subhash Gulati, Advocate and
Ms. Seema Gulati, Advocate
Mr. Alankar Narula, Advocate
for the petitioners.

Mr. Jasjit Singh, DAG, Punjab.

Mr. Manpreet Singh, Advocate with
Ms. Simarleen Kaur, Advocate for respondent No.4.

ANOOP CHITKARA, J.

Complaint No.	Sections	Titled
NACT/1084/2021 (CNR NO.PBJL0300426 22021)	138 of Negotiable Instruments Act, 1881	Major Avtar Singh Dhillon Vs. Bombay Motor Trading Co. And Others.

1. The petitioner residing in United States of America is aggrieved by being declared as a proclaimed offender and challenging the impugned orders dated 30.05.2023 has come up before this Court under Section 482 CrPC.
2. The petitioner’s stand is that he was not residing in India and as such, there was no compliance of Sections 82 and 105 Cr.P.C.
3. There is no dispute about the petitioner living in USA.
4. Be that as it may, the primary reason to quash the proclamation orders was when the petitioner was not in India despite affixations being made in their Indian address.
5. Another reason to quash the proclamation is the statutory provision of Section 105 CrPC. It shall be relevant to extract Section 105 of CrPC, 1973, which reads as follows:



105. Reciprocal arrangements regarding processes. —

(1) Where a Court in the territories to which this Code extends (hereafter in this section referred to as the said territories) desires that—

- (a) a summons to an accused person, or
- (b) a warrant for the arrest of an accused person, or
- (c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or
- (d) a search-warrant, issued by it shall be served or executed at any place,—

(i) within the local jurisdiction of a Court in any State or area in India outside the said territories,

it may send such summons or warrant in duplicate by post or otherwise, to the presiding officer of that Court to be served or executed; and where any summons referred to in clause (a) or clause (c) has been so served, the provisions of section 68 shall apply in relation to such summons as if the presiding officer of the Court to whom it is sent were a Magistrate in the said territories;

(ii) in any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country or place for service or execution of summons or warrant in relation to criminal matters (hereafter in this section referred to as the

contracting State), it may send such summons or warrant in duplicate in such form, directed to such Court, Judge or Magistrate, and send to such authority for transmission, as the Central Government may, by notification, specify in this behalf.]

(2) Where a Court in the said territories has received for service or execution—

- (a) a summons to an accused person, or
- (b) a warrant for the arrest of an accused person, or
- (c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or
- (d) a search-warrant, issued by—

(I) a Court in any State or area in India outside the said territories;

(II) a Court, Judge or Magistrate in a contracting State, it shall cause the same to be served or executed] as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where—

(i) a warrant of arrest has been executed, the person arrested shall, so far as possible, be dealt with in accordance with the procedure prescribed by sections 80 and 81,

(ii) a search-warrant has been executed, the things found in the search shall, so far as possible, be dealt with in accordance with the procedure prescribed by section 101:

[Provided that in a case where a summons or search-warrant received from a contracting State has been executed, the documents or things produced or things found in the search shall be forwarded to the Court issuing the summons or search-warrant through such authority as the Central Government may, by notification, specify in this behalf.]



6. Thus, there is nothing to demonstrate that the State had either complied with the statutory provisions of Section 105 CrPC or were not required to comply with such provisions.

7. A perusal of the said statement reveals that the prosecution is complying with the provisions of Section 82 & 105 CrPC. Section 82 CrPC provides that affixation must be made where the petitioner resides. Given above, the proclamation was not affixed in terms of section 82 (2) (i) (a) & (b) of CrPC, which mandate that the proclamation shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides; and it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village. None of these conditions were complied with, and the non-adherence to the procedure has rendered the proclamation illegal.

8. In *Himachal Pradesh Cricket Association v State of Himachal Pradesh*, **2018:INSC:1039 [Para 47]**, *2018 (4) Crimes 324*, Hon'ble Supreme Court holds

“[47]. As far as Writ Petition (Criminal) No. 135 of 2017 is concerned, the appellants came to this Court challenging the order of cognizance only because of the reason that matter was already pending as the appellants had filed the Special Leave Petitions against the order of the High Court rejecting their petition for quashing of the FIR/Chargesheet. Having regard to these peculiar facts, writ petition has also been entertained. In any case, once we hold that FIR needs to be quashed, order of cognizance would automatically stands vitiated.”

9. Given the above, continuing these proceedings will not suffice for fruitful purposes. In the facts and circumstances peculiar to this case, the Court invokes the inherent jurisdiction under section 482 CrPC and quashes the order dated 30.05.2023, passed by Judicial Magistrate, 1st Class, Jalandhar, and all subsequent proceedings qua the petitioner, subject to the compliance of the following terms and conditions.

10. Petitioner's counsel submits that they will appear before the trial Court and they be given reasonable time to appear. It is clarified that because, as of date, the petitioner is aware of the proclamation and filing of the present petition, as such, let the petitioners appear before the concerned Court on or before 17.09.2024. Counsel for the petitioner shall inform the petitioner about the directions of this Court so they can make an appearance before the concerned trial Court. Given the statement made by the petitioner's counsel, they shall be deemed to have been informed about this order. It is



clarified that if the petitioner fails to appear, then this order shall stand recalled automatically without any further reference to this Court resorting to Section 362 r/w 482 CrPC, for the reason that this Court has intervened without even getting a response from the State Government and the State Government did not insist to the filing of the response because of the statement made on behalf of the petitioner that he shall put in an appearance before the concerned Court.

11. In the entirety of facts and circumstances peculiar to this case, the present petition is allowed, and proclamation orders are quashed and set aside, subject to the condition that the petitioner shall appear before the concerned trial Court on or before 17.09.2024. The lookout circular (LOC) and non-bailable warrants issued against the petitioner in the abovementioned complaint shall remain until 17.09.2024 to enable the petitioners to travel to India. It is clarified that if they do not appear before the concerned trial Court on or before 17.09.2024, this order shall stand recalled automatically without any further reference to this Court under Section 403 read with Section 528 BNSS, 2023. All pending miscellaneous applications, if any, stand disposed of.

12. Petition allowed partly in aforesaid terms and conditions.

(ANOOP CHITKARA)
JUDGE

13.08.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.