

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

CRM-M-37223-2023

Reserved on: 14.02.2024

Pronounced on: 16.02.2024

2024:PHHC: 022041

KRISHAN KUMAR

. . . . PETITIONER

Vs.

STATE OF HARYANA

. . . . RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Mohit, Advocate, for
Mr. Sunit Sangwan, Advocates,
for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioner prays for quashing of the order dated 07.07.2022 (Annexure P1) passed by Ld. JMIC, Gurugram in criminal complaint bearing CIS No.8858/2019 titled '*Sachin Arora Vs. Krishan Kumar*', under Section 138 of the Negotiable Instruments Act, 1881 [for short 'the NI Act'], whereby petitioner was declared proclaimed person, along with all the consequential proceedings arising therefrom including FIR No.1061 dated 20.07.2022 (Annexure P2) registered under Section 174A IPC at Police Station Shivaji Nagar, District Gurugram.

2. Complaint in question was filed by one Sachin Arora seeking prosecution of the petitioner under Section 138 of the NI Act. Petitioner was declared proclaimed person vide order dated 07.07.2022 and on the direction of the Court, FIR No.1061 dated 20.07.2022 (Annexure P2) registered under Section 174A IPC at Police Station Shivaji Nagar, District Gurugram.

3.1 Contention of ld. counsel is that petitioner was never served. Though service of the petitioner by way of warrant of arrest is shown to have been effected through his brother Naresh Kumar, but petitioner has no brother or any relation by the name of Naresh Kumar, as petitioner is the only son of his parents. Ld. counsel further contends that shop on which the service of the petitioner by way of proclamation is shown, had been demolished way back in 2021 by *Dharamshala* and the new shop constructed by *Dharamshala* was never allotted to the petitioner.

3.2 Ld. counsel further contends that proclamation was not effected in accordance with Section 82 of CrPC, as one of the requirements is that proclamation is to be publically read in some conspicuous place of town or village, in which the concerned person ordinarily resides, but in the present case, said condition was not fulfilled. Ld. counsel further contends that later on, the complaint itself has been withdrawn by the complainant and that vide order dated 17.08.2022 (Annexure P4), complaint was dismissed as withdrawn.

4. In reply to the petition, the respondent-State has only submitted regarding declaration of the petitioner as proclaimed person and registration of the FIR under Section 174A IPC, without refuting the contention of the petitioner to the effect that he has no brother by the name of Naresh Kumar and that the proclamation was not effected as per law.

5. I have considered submissions of both the sides and appraised the record.

6. Perusal of the paperbook would reveal that after recording preliminary evidence, process against accused-petitioner was issued on 30.04.2019. Summons remained unserved. Presumption of service was

drawn due to non-receipt of the notice sent through registered post and so bailable warrants and then the warrants of arrest were issued against the petitioner. It is revealed further that on the warrant of arrest meant for 21.03.2022 (Annexure P5), report was received that petitioner was not found at the given address and that his brother Naresh Kumar told that petitioner had gone outside.

7. It is the specific stand of the petitioner that he has no brother or any other relation by the name of Naresh Kumar. Said fact is not refuted by the respondent-State.

8. It is revealed further that vide order dated 21.03.2022, proclamation was directed to be issued to secure the presence of the petitioner for 07.07.2022. As per the report Annexure P6 of the Executing Constable Raj Kumar, he effected the proclamation on 27.03.2022 and that petitioner was not found at the given address and his brother Naresh Kumar told that petitioner had gone outside and then copy of proclamation was pasted at the outer of the shop. A copy of proclamation was pasted at the conspicuous place of the roundabout and another copy was pasted outside the Court premises. Based on this report and petitioner having not appeared before the Court on the given date i.e. 07.07.2022, he was declared proclaimed person.

9. Section 82 of the CrPC provides about the proclamation for person absconding. Sub Section (2) of Section 82 CrPC, provides how the proclamation is required to be published. Said provision reads as under: -

“82. Proclamation for person absconding-

(1) Xxxxx

(2) The proclamation shall be published as follows—

(i) a) it shall be publicly read in some conspicuous place of the town or village in

which such person ordinarily resides; b) it shall be affixed to some conspicuous part of the house or home-stead in which such person ordinarily resides or to some conspicuous place of such town or village; c) a copy thereof shall be affixed to some conspicuous part of the Court house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.”

10. The aforesaid provision would make it clear that though direction of the Court to publish copy of proclamation in a newspaper is discretionary but other conditions laid down in the provision are mandatory, as per which proclamation is required to be publically read in some conspicuous place of town or village, in which the concerned person resides and that a copy of the same is required to be pasted at some conspicuous part of the house or home-stead of the concerned person; another copy to be fixed at conspicuous part of the Court house and another copy at the conspicuous place of the town or village.

11. In the present case, as the report (Annexure P6) reveals, though a copy each of the proclamation was affixed at the outer door of the given address and another on the conspicuous place of the town and another one on the Court complex, but there is nothing in the report to show that proclamation was publically read in conspicuous place of town or village, where the concerned person i.e. petitioner resided.

12. As has already been noticed that it is the specific stand of the petitioner that the shop i.e. Krishna Cosmetics, Adarsh Dharamshala, Railway Road, Bhiwani, the address of which is given in the proclamation, had already been demolished in 2021 by the Dharamshala and that the new shop allotted in its place was not allotted to the petitioner. Again State has not refuted the said contention.

13. In view of the aforesaid facts and circumstances, when the proclamation has not even effected as per the mandatory requirements of Section 82 CrPC, the impugned order dated 07.07.2022 (Annexure P1), whereby the petitioner was declared proclaimed person, cannot be sustained in the eyes of law.

14. Apart from the above, paper-book reveals that petitioner was produced before the Court concerned on 21.07.2022, and as the offence in question are bailable, he was admitted to bail on the same day. Later on, complainant of the case i.e. Sachin Arora has withdrawn the complaint by making a statement to the effect that he had received the cheque amount besides the litigation costs from the accused-petitioner and considering that statement, the complaint itself was dismissed as withdrawn on 17.08.2022, as is evident from Annexure P4.

15. In view of the aforesaid discussion, the impugned order dated 07.07.2022 (Annexure P1) passed by Ld. JMIC, Gurugram in criminal complaint bearing CIS No.8858/2019 titled '*Sachin Arora Vs. Krishan Kumar*', under Section 138 of the Negotiable Instruments Act, 1881 [for short 'the NI Act'], whereby petitioner was declared proclaimed person, along with all the consequential proceedings arising therefrom including FIR No.1061 dated 20.07.2022 (Annexure P2) registered under Section 174A IPC at Police Station Shivaji Nagar, District Gurugram, are hereby quashed.

Disposed of.

16.02.2024

Vivek

(DEEPAK GUPTA)
JUDGE

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |