

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

**CRM-M No. 39623 of 2022 (O&M)
Date of Decision: 28.02.2024**

Mahender Kumar

..... Petitioner

Versus

Housing Development Finance Corporation Ltd., Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Ms. Shivani Sahni, Advocate for
Mr. Sourabh Goel, Advocate
for the petitioner.

Mr. Brijesh Singh, Advocate for
Mr. Shekhar Verma, Advocate
for the respondent.

HARKESH MANUJA, J. (ORAL)

The petitioner, by way of present petition filed under Section 482 Cr.P.C., seeks quashing of the order dated 31.05.2022 (wrongly typed as 16.05.2022 as explained vide report dated 30.09.2022 furnished by the concerned Judicial Officer) passed by learned Judicial Magistrate Ist Class, Chandigarh, whereby he was declared as Proclaimed Person in complaint case No. 5502 of 2020, titled “*HDFC Versus Mahender Kumar*”.

[2] In the present case, having been arrayed as an accused in the complaint filed under Section 138 of the Negotiable Instruments Act, the petitioner was declared proclaimed person vide order dated 31.05.2022 on account of his non-appearance, resulting into passing of the impugned order dated 31.05.2022.

[3] Learned counsel for the petitioner submits that while declaring the petitioner as proclaimed person, the mandatory compliance of Section 82

Cr.P.C. was not made as the proclamation was never read over in public place by the executant police officer, thereby violating Section 82 (2) (i) (a) of the Code of Criminal Procedure. She further submits that the initiation of proceedings under Section 82 Cr.P.C. was uncalled for as non-bailable warrants against the petitioner were received back unserved.

[4] On the other hand, learned counsel for the respondent vehemently opposes the prayer made in the petition while submitting that despite having knowledge about the pendency of proceedings as well as the summoning order, the petitioner chose not to appear before the trial Court and thus, the proceedings initiated against him in the impugned order, warrants no interference.

[5] I have heard learned counsel for the parties as well as gone through the paper-book and find substance in submissions made on behalf of the petitioner.

[6] In the present case, a perusal of the order dated 07.03.2022 (Annexure P-5) passed by the learned JMIC, Chandigarh, shows that the proclamation under Section 82 Cr.P.C. was issued for 31.05.2022 as the non-bailable warrants issued against him were received back unserved. A report dated 30.09.2022 which has been submitted by the concerned Judicial Officer shows that in compliance of the order dated 07.03.2022 (P-5), the proclamation was effected on 12.04.2022 with one copy thereof being pasted on the address of the petitioner; another copy pasted at local bus stand; and the third one at the notice board of the District Court besides its announcement in the public. Though, in the statement of the serving constable, namely, Sombir, which was recorded on 31.05.2022, in the shape

of a printed proforma, it has been mentioned that the proclamation was “announced in the public”, however, it has nowhere been recorded that the proclamation was ever “read publically” as required under Section 82 (2) (i) (a) of Cr.P.C. The trial Court while passing the impugned order dated 31.05.2022 having relied upon the statement dated 31.05.2022, that of executant constable, failed to draw distinction between the “announcement of the proclamation” and “the same having been read publically in some conspicuous place of the town or village in which the petitioner was residing”. The provision of Section 82 Cr.P.C. being stemming from Article 21 of the Constitution of India thus inviolable, needs to be complied with mandatorily. Moreover, the statement of executant police official was on a printed proforma instead of same having been recorded in Court, which also raises doubt about the compliance of mandatory procedure, thereby making the petitioner entitled for its benefit.

[7] In the given facts, the proclamation having not been read publically, resulting into non-compliance of Section 82 (2) (i) (a) of Cr.P.C., therefore, the order dated 31.05.2022 (wrongly typed as 16.05.2022) passed by the learned Judicial Magistrate Ist Class, Chandigarh, is set aside; the petitioner is directed to surrender himself before the trial Court / Illaqa Magistrate concerned within 10 days from today and will furnish fresh bail / surety bonds, which shall be accepted by the trial Court to its satisfaction and till then, no coercive steps shall be taken against him.

[8] **Disposed off** accordingly.

[9] The aforesaid order shall, however, be subject to payment of costs of Rs. 2,000/- to be deposited by the petitioner with the Punjab &

Haryana High Court Bar Clerks’ Association, Chandigarh with one week from the date of receipt of certified copy of this order.

February 28, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No