

**CRM-M-39546-2024****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.****Sr. No.134****Case No. : CRM-M-39546-2024****Date of Decision : August 13, 2024**

Pritpal Singh

.... Petitioner

vs.

State of Punjab and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Rahul Soi, Advocate
for the petitioner (through Video Conferencing).

Ms. Manjot Kaur, AAG, Punjab.

* * *

GURBIR SINGH, J. :

1. Prayer in the present petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 is for quashing and setting aside the order dated 28.08.2023 (Annexure P-7), passed by learned Judicial Magistrate Ist Class, Patiala (hereinafter referred to as – Trial Court), in a complaint case under Section 138 of the Negotiable Instruments Act, 1881 (for brevity – the NI Act), whereby the petitioner has been declared as Proclaimed Person and SHO concerned has been directed to initiate proceedings under Section 174-A IPC. Further challenge is to the order dated 26.02.2024, passed by learned Trial Court, whereby property of the petitioner has been ordered to be attached, pursuant to aforesaid order dated 28.08.2023.

**CRM-M-39546-2024****-2-**

that in a complaint case registered against the petitioner under Section 138 of the NI Act, he was declared Proclaimed Person. Vide order dated 20.08.2022 (Annexure P-1), the petitioner was summoned for 24.11.2022 but his service could not be effected on account of incomplete address. Again vide order dated 24.11.2022 (Annexure P-2), fresh notice was ordered to be issued to the petitioner for 09.03.2023, on furnishing correct/complete address by the complainant. However, on 09.03.2023, the complainant failed to file fresh address and he was granted last opportunity to do the needful and the case was adjourned to 06.06.2023. In the meantime, on 24.04.2023, complainant moved application for substituted service of the petitioner on the ground that he was not having any other address except the address given by him in the Court and since the petitioner was not being served on the said address, he be served through publication. The application was allowed and petitioner was ordered to be served by way of publication in the newspaper namely "Azad Soch". On the date already fixed i.e. 06.06.2023, it was found that publication charges were not deposited by the complainant. So, he was directed to deposit the said publication charges and notice was ordered to be issued through publication for 07.08.2023. Vide order dated 07.08.2023 (Annexure P-6), it was observed by the learned Trial Court that the publication issued against the petitioner was received back duly effected on 26.07.2023 and since period of 30 days had not elapsed, the case was adjourned for 28.08.2023, on which date the petitioner was declared Proclaimed Person by the learned Trial Court. The operative part of the impugned order dated 28.08.2023

**CRM-M-39546-2024****-3-**

(Annexure P-7) reads as under :-

“Accused was ordered to be served through proclamation by way of publication under Section 82 of the Cr.P.C. which has already been published on 26.07.2023. Already a period of more than one month has been expired since then. But the accused has not come present. This court is of the view that accused is intentionally not appearing in the Court and has voluntarily concealed himself. He has been absconded. So, accused is declared proclaimed person. Necessary intimation be sent to the SSP/SHO concerned with directions to constitute a special police party to apprehend the accused and to initiate proceedings against the accused U/s 174-A IPC as per law and intimation in this regard be sent to the Court of undersigned.”

2. Learned counsel for the petitioner argues that the summons were issued to the petitioner, which were received back unserved with the report that address of the petitioner was incomplete. The complainant was directed to furnish the fresh correct and complete address of the petitioner but on the adjourned date i.e. on 09.03.2023, the complainant failed to provide the address of the petitioner and case was adjourned to 06.06.2023 for compliance. On 24.04.2023, the complainant moved application for substituted service on the ground that the address mentioned in the petition was the last known address of the petitioner. Said application was allowed and petitioner was ordered to be served through publication in newspaper “Azad Soch”. On 28.08.2023, the petitioner was declared a Proclaimed

**CRM-M-39546-2024****-4-**

Person and intimation was sent to the SHO concerned to initiate proceedings under Section 174-A IPC.

3. Notice of motion.

4. Pursuant to receipt of advance copy of the present petition through the Registry, Ms. Manjot Kaur, AAG, Punjab is present to assist the Court. Learned State counsel has submitted that the petitioner was having knowledge of the pendency of the case against him. He intentionally avoided his appearance before the Court and he was rightly declared Proclaimed Offender. So, the present petition deserves dismissal.

5. I have heard learned counsel for the parties and perused the case file.

6. In the case in hand, the summons sent to the petitioner were not served for want of correct address. On the application moved by the complainant, notice was issued to the petitioner through newspaper. The learned Magistrate concerned issued the said notice through publication and the petitioner was declared Proclaimed Person vide impugned order.

7. The learned Trial Court had considered the complaint under Section 138 of the NI Act equivalent to the Civil Suit. Section 82 Cr.P.C. can only be invoked if the Court has reason to believe that any person, against whom a warrant has been issued by it, has absconded or is concealing himself so that such warrant cannot be executed. After complying with provisions of Section 82(2)(i)(a) Cr.P.C., which are mandatory, a person can be declared Proclaimed Person. In this case, neither warrant was issued against petitioner nor proclamation as per Section



82 Cr.P.C. was issued. So, impugned order is not sustainable in the eyes of law.

8. In the light of the above discussion, the impugned order dated 28.08.2023 (Annexure P-7), declaring the petitioner as Proclaimed Offender and also the order dated 26.02.2024 (Annexure P-8), passed in pursuance of earlier order dated 28.08.2023, whereby property of the petitioner has been ordered to be attached, are hereby set aside along with all consequential proceedings arising therefrom.

9. Pending applications, if any, shall stand disposed of along with this judgment.

August 13, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.