

CRM-M-51782-2023

261 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-51782-2023 (O&M)

Date of Decision: 11.01.2024

MALLIKHARJUN REDDY BENNAPOOSA @
MALIKA ARJUN REDDY

...Petitioner

V/S

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anoop Kumar Yadav, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR J. (Oral)

CRM-49135-2023

This is an application under Section 482 of Cr.P.C. praying for placing on record the orders passed by the trial Court as Annexure P-6 and Annexure P-7.

For the reasons mentioned in the application, same is allowed and orders of trial Court are taken on record as Annexures P-6 and P-7, subject to all just exceptions.

CRM-M-51782-2023

1. This petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of the impugned order dated 08.02.2023 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Hisar in complaint bearing No. NACT-1096-2021 titled as ***“Yogesh Soni Vs. M/s. Tejas Marbles and Granites and Others”*** whereby the petitioner has been declared as proclaimed person and further seeking quashing of the FIR No. 256 dated 14.04.2023 under Section 174-A of Indian Penal Code

(Annexure P-3) registered at Police Station Hisar, along with consequential proceedings arising therefrom, on the basis of compromise/affidavit dated 30.09.2023 (Annexure P-4).

2. On 13.10.2023, following order was passed:

“This second petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of impugned order dated 08.02.2023, Annexure P2, passed by learned Judicial Magistrate Ist Class, Hisar in case titled “Yogesh Soni Versus M/s Tejas Marbles and Granites & others”, whereby the petitioner has been declared as proclaimed person as well as FIR No.256 dated 14.04.2023 under Section 174-A IPC, Annexure P3 registered against the petitioner, along with all subsequent proceedings arising therefrom, on the basis of compromise/affidavit dated 30.09.2023, Annexure P4.

Counsel for the petitioner submits that the first petition was withdrawn vide order dated 06.10.2023, Annexure P5, with permission to file a fresh one on the same cause of action. Counsel submits that the petitioner was declared as a proclaimed person in proceedings initiated under Sections 138/141 of Negotiable Instruments Act, 1881 by respondent No.2. While referring to the affidavit dated 30.09.2023, Annexure P4 executed by respondent No.2, counsel submits that the petitioner has paid the entire amount under the disputed cheque and respondent No.2 has agreed to withdraw the complaint. He submits that petitioner was declared as a proclaimed person in violation of procedure prescribed under Section 82 Cr.P.C. and the consequential FIR, Annexure P3, is an abuse of the process of the Court. He submits that the petitioner is prepared to surrender before the trial Court and join the proceedings, subject to any cost

imposed by this Court.

Notice of motion.

On asking of the Court, Mr.Ramender Singh Chauhan, AAG, Haryana, accepts notice on behalf of respondent No.1-State.

Mr.Ravi Yadav, Advocate has put in appearance on behalf of respondent No.2 and accepts notice on his behalf. He has filed vakalatnama, which is taken on record.

Counsel representing respondent No.2 submits that he has instructions to withdraw the complaint.

List on 11.1.2024.

Let the petitioner surrender before the trial Court within a period of 3 weeks from today. In case he does so and moves an appropriate application, he shall be released on bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate. This will be subject to deposit of cost of Rs.15,000/- with 'Poor Patient Welfare Fund', PGIMER, Sector, 12, Chandigarh, which shall be a condition precedent to the release of the petitioner on bail."

3. Learned counsel for the petitioner *inter alia* contends that the perusal of the order dated 26.10.2023 (Annexure P-6), passed by Judicial Magistrate Ist Class, Hisar, indicates that the petitioner has complied with the directions issued by this Court on 13.10.2023 and surrendered before the learned trial Court and he has also deposited the costs of Rs. 15,000/- with the 'Poor Patient Welfare Fund', PGIMER, Chandigarh. On 02.11.2023, the complainant has appeared before the JMIC, Hisar and has withdrawn the complaint filed under Section 138 of Negotiable Instruments Act (hereinafter to be referred as 'NI Act') against the petitioner. Learned counsel further contends that the main offence, on the basis of which the

FIR(supra) has been registered, stands withdrawn by the respondent-complainant, as respondent has already received the cheque amount from the petitioner to his satisfaction.

4. Having heard the learned counsel for the petitioner and after perusing the record, it transpires that once the main complaint under Section 138 of the NI Act, has been withdrawn by the complainant-respondent against the petitioner, the proceedings against the petitioner arising out of FIR(supra) under Section 174-A of IPC, cannot sustain either. Moreover, in view of the provisions contained under Section 195 of Cr.P.C., no Court can take cognizance of any offence punishable under Section 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned. However, the drill of the aforementioned procedure has not been followed in the present case and on this ground alone, the FIR(supra) is liable to be quashed. In the considered opinion of this Court, order passed by the concerned Jurisdictional Magistrate and the registration of the FIR under Section 174-A by the Jurisdictional Police Officer, is in violation of the procedure under Section 195 of Cr.P.C. Reliance in this regard can be placed upon the judgment passed by Co-ordinate Bench of this Court in CRM-M-41656-2023 decided on 23.08.2023 titled as **Pardeep Kumar Vs. State of Punjab and Another**. A perusal of the record clearly indicates that even before declaring the petitioner as proclaimed person, the procedure as provided under Section 82 of Cr.P.C. has not been followed. The effective service of the petitioner before passing of the impugned order is debatable.

5. This Court in the judgment passed in **Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506** has held that the Court is first required to record its satisfaction before

issuance of process under Section 82 Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in *Sonu vs. State of Haryana 2021 (1) RCR (Cri.) 319*, it has been held that the conditions specified in Section 82 (2) Cr.P.C. for the publication of a proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an ‘irregularity’ and renders the proclamation as nullity. Once the impugned order passed under Section 82 Cr.P.C. is found to be suffering from incurable illegality, the FIR registered on the basis of the same under Section 174A IPC would not survive either.

6. In view of the discussion made hereinabove, the present petition is allowed and the impugned order dated 08.02.2023 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Hisar and the impugned FIR No. 256 dated 14.04.2023 under Section 174-A of Indian Penal Code (Annexure P-3) registered at Police Station Hisar are hereby quashed qua the petitioner only.

11.01.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No