

2024:PHHC:139148



123 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-51768-2024 (O&M)
DECIDED ON: 23.10.2024

MEHAR SINGH

PETITIONER

VERSUS

STATE OF PUNJAB

RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Vrinder Chhibber, Advocate,
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

CRM-42315-2024

Prayer in the present application for placing on record the copy of complaint filed under Section 138 of Negotiable Instruments Act, 1881 by respondent No.2 and AIR ticket of the applicant/petitioner as Annexures A-1 & A-2.

Application is allowed, as prayed for.

Annexures A-1 & A-2 are taken on record subject to all just exceptions.

CRM-M-51768-2024

1. The jurisdiction of this Court under Section 528 of BNSS, 2023 has been invoked seeking setting aside of the order dated 01.03.2023 (Annexure P-4) in case bearing No. NACT-39-2021, titled as “Raghibir Singh vs. Mehar Singh etc.” passed by Judicial Magistrate Ist Class, Rupnagar vide which the petitioner has been declared as Proclaimed

Offender.

2. The assertion is that the petitioner came to know about the impugned order in the month of July and only thereafter, he has filed the present petition. It is further asserted that due to wrong address mentioned in the complaint, the complainant has managed to initiate deliberately and with malafide adverse PO proceedings against the petitioner, which is totally in violation of provision of Section 82 Cr.P.C. He further asserts that even otherwise also this order is liable to be set aside, as the absence of the petitioner was neither intentional nor deliberate as he was not residing in India and he had no knowledge about the proceedings initiated against him.

3. On the other hand, Mr. Jaspal Singh Guru, AAG, Punjab having served with an advance copy, has submitted that the petitioner despite the proclamation had failed to appear before the trial Court and has rightly been declared proclaimed person, and in addition the petitioner is evading the process of court which is highly deprecated on her part. He also asserts that non-complying with the orders of the court shows that the petitioner has no respect for the courts' order and a person who obstructs the process of law and evades from it does not deserves any concession.

4. Heard learned counsel for the respective parties.

5. According to Section 82 of the Criminal Procedure Code, a proclamation may be issued against an individual by the Court if it is reasonably believed that the person for whom a warrant has been issued has absconded or is hiding, making it impossible for the warrant to be carried out.

6. A person cannot be said to be “abscond” or “evade” the

execution of warrant when he had gone to a distant place before the issue of the warrant. Dependence can be made on the judicial dictum rendered in the case of “***M.S.R. Gundappa v. State of Karnataka***” (1977 Cr LJ NOC 187), wherein it was held that a person who had gone abroad even before the issue of the warrant of arrest cannot be said to be absconding or concealing himself with the intention to disrupt the execution of that warrant.

7. Reliance can also be placed upon the judgment of this Court rendered in CRM-M-1513-2009 tiled as “***Mehar Singh And Anr. vs State of Punjab***” wherein it was held as under:

“In the present case, since the petitioners were already residing in Canada before the registration of FIR in question i.e. since the year 1997, there was no occasion for them to conceal themselves or abscond. A perusal of order dated 7-10-2008 (Annexure P-10) and order dated 21-12-2007 (Annexure P- 4) does not reveal that the petitioners were ever attempted to be served in Canada especially when there was no material on record that the petitioners had left the country after the registration of FIR in question with a view to abscond or conceal themselves. Rather in the inquiries conducted by the police, the petitioners were found to be innocent because the alleged papers in question were prepared in Canada. Thus, the petitioners were declared proclaimed offenders in violation of Section 82, Criminal Procedure Code. Accordingly, the impugned order dated 7-10-2008 (Annexure P-10), whereby the petitioners were declared proclaimed offenders, is set aside.”

8. From the perusal of the case file as well from the support of the documents it can be inferred that the petitioner was residing at Italy when the proclamation was issued, therefore, there was no occasion for him to evade the process of law intentionally, as he was never served in accordance with law. Thus the proclamation order dated 01.03.2023 (Annexure P-4) is in gross violation of Section 82 Cr.P.C.

9. Therefore in light of the afore-said judicial pronouncements

and discussions made hereinabove, this Court is of the firm view that the impugned order dated 01.03.2023 (Annexure P-4), vide which the petitioner has been declared proclaimed offender, is bad in law and not sustainable. Hence, the same deserves to be set aside.

10. In view of the above, the present petition stands allowed.

11. The petitioner is directed to surrender before the trial Court within a period of 15 days from the date he reaches India and apply for regular bail. In case, such an application for bail is moved by the petitioner before the trial Court, the same shall be considered and decided on the same date in accordance with law.

12. The afore-said direction is subject to payment of costs of Rs.10,000/- with the Chandi Kusht Ashram Society, Industrial Area, Chandigarh (Account No.1445265900, IFSC Code: KKBK0004211) and a receipt of the same be produced before the Trial Court and only in that eventuality, application of the petitioner seeking bail be considered.

(SANDEEP MOUDGIL)
JUDGE

23.10.2024
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| 1. Whether speaking/ reasoned : | Yes / No |
| 2. Whether reportable : | Yes / No |