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THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.54009 of 2024
Date of Decision:28.10.2024

Unique Traders

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Abdul Aziz, Advoi
for the petitioner.

RAJESH BHARDWAJ, J. (ORAL)

1. Present petition has been filed praying for setting aside the orders dated 07.06.2024 and 29.07.2024 (Annexures P-15 & P-17) passed by the learned Special Railway Magistrate-cum-Judicial Magistrate First Class, Ambala vide which the proclamation has been issued and petitioner has been declared as proclaimed person in complaint under Section 138 of Negotiable Instruments Act titled as M/s Adhunik Crop Care vs. Unique Traders numbered as COMA/2901/2019 dated 03.10.2019 in an illegal, arbitrary manner and without following the due process as mandated under the Act.
2. Precise submission made by learned counsel for the petitioner is that the petitioner was prosecuted in the complaint bearing COMA/2901/2019 filed under Section 138 of the Negotiable Instruments



Act. He has submitted that the complainant had given the raw material to the petitioner of Rs.3,64,000/- and the petitioner issued a cheque bearing No.875934 amounting to Rs.3,64,894 dated 08.08.2019 to the complainant. He has submitted that the said cheque was returned to the complainant as dishonored by the Bank with the remarks "Funds Insufficient". He has submitted that the complainant has filed the complaint under Section 138 of Negotiable Instruments Act in the Court of learned Special Railway Magistrate-cum-Judicial Magistrate First Class, Ambala against the petitioner on false and frivolous allegations. He has submitted that after filing the complaint, notice was issued to the petitioner by way of RC for 16.04.2020 and thereafter in view of the Covid-19 Pandemic, the matter was adjourned time and again. He has submitted that on 26.08.2021 when the matter was taken up, it was brought to the notice of the Court that notice to the petitioner was not issued as RC was not filed and thus directions were issued to counsel for the complainant to file the same within a week and thereafter fresh notice was ordered to be issued for 25.03.2022. He has submitted that on 25.03.2022, the petitioner remained unserved and in view of the same, bailable warrants in the sum of Rs.5000/- with one surety in the like amount against the petitioner were issued for 19.09.2022. He has submitted that thereafter on 19.09.2022, fresh bailable warrants were issued against the petitioner in the sum of Rs.5000/- with one surety in the like amount against the petitioner for 27.10.2022. He has further submitted that on 27.10.2022, bailable warrants were received back



unserved with the report of left address and thus, on the same day i.e. 27.10.2022, non-bailable warrants were issued against the petitioner for 12.01.2023 and thereafter for 13.04.2023, 06.11.2023, 09.02.2024, 20.05.2024, 07.06.2024. He has submitted that on 07.06.2024, the trial Court without considering the fact, issued the proclamation against the petitioner for 11.07.2024. He has submitted that on 29.07.2024, the petitioner was declared proclaimed person. He has submitted that without considering the service report in which it was mentioned that 'Riyasat Hussain is not served at the address', the trial Court straight away proceeded to declare the petitioner as proclaimed person. He has submitted that the notices issued to the petitioner were never received by him as he was never residing on the address as mentioned in the complaint filed under Section 138 of Negotiable Instruments Act and also the name mentioned in the complaint was wrong, thus the same could not be served. He has submitted that the petitioner came to know about the present proceedings when the police raided the shop of the petitioner and this fact was apprised to the petitioner by his neighbours as he was in hospital at Delhi due to illness of his wife, who was suffering from Breast Cancer. He has submitted that the petitioner is old aged man and he has no role to play and has been falsely implicated in the present complaint. He has fairly submitted that the petitioner is ready to appear before the trial Court where the complaint is now pending.

3. Notice of motion to official respondent No.1 only at this stage.



4. On the asking of the Court, Mr. Tanuj Sharma, AAG, Haryana appears and accepts notice on behalf of respondent No.1-State. He on the other hand contends that the petitioner was rightly declared as a proclaimed person and he is liable to be prosecuted in the said case, as he had failed to appear in the Court despite orders.

5. I have heard counsel for the parties and perused the record.

6. It is apparent that the present complaint was filed by the complainant under Section 138 of the Negotiable Instruments Act in which the petitioner was declared as proclaimed person in the proceedings under the Negotiable Instruments Act due to dishonor of the cheque amounting to Rs.3,64,894/-. However the petitioner could not be served due to the mentioning of wrong name and address of the petitioner by the complainant. Taking into consideration the controversy involved in the present case, this Court is of the opinion that the present case can be disposed of at this stage without issuance of notice to the opposite party as the petitioner was allegedly never served in the complaint nor was aware about the proceedings/proclamation issued against him. So, keeping in view the above-said facts and the law settled when the petitioner is ready to join the proceedings, continuation of the proceedings shall be an abuse of the process of the Court.

7. Consequently, the present petition is allowed. The orders dated 07.06.2024 & 29.07.2024 (Annexures P-15 & P-17) passed by the learned Special Railway Magistrate-cum-Judicial Magistrate First Class, Ambala vide which the proclamation has been issued and petitioner has



been declared as proclaimed person in complaint under Section 138 of Negotiable Instruments Act titled as M/s Adhunik Crop Care vs. Unique Traders numbered as COMA/2901/2019 dated 03.10.2019 along with consequential proceedings arising out of the same, are hereby quashed subject to payment of costs of Rs.10,000/- to be paid by the petitioner to the complainant within 10 days from today.

9. The petitioner is directed to appear before the Court of learned Special Railway Magistrate-cum-Judicial Magistrate Ist Class, Ambala within a period of 10 days from today and file an appropriate application along with cost of Rs.10,000/- and the learned Special Railway Magistrate-cum-Judicial Magistrate Ist Class, Ambala will admit him to bail during the pendency of the complaint and proceed with the complaint as per law. Thereafter notice be issued to the complainant and on his appearance, amount of Rs.10,000/- awarded as costs shall be paid to him forthwith. The petitioner will have protection from arrest in the present case for a period of 10 days.

10. Needless to say that in case the petitioner fails to pay the cost and comply with the aforesaid direction, the orders under challenge dated 07.06.2024 & 29.07.2024 would come in force and the present petition would be deemed to have been dismissed.

11. Disposed of.

28.10.2024
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(RAJESH BHARDWAJ)
JUDGE

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