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**THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.54963 of 2024

Date of Decision: 06.11.2024

Abhimanyu Silwal

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Ms. Pallavi Babbar, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (ORAL)

1. Present petition has been filed praying for quashing/setting aside the order dated 22.10.2024 (Annexure P-3) passed by the learned Judicial Magistrate Ist Class, Jagadhri in criminal complaint No.1205/2022 dated 11.07.2022 under Section 138 of the NI Act declaring the petitioner as proclaimed person along with all consequential proceedings emanating therefrom against the petitioner. Further prayer has been made for staying the further proceedings in criminal complaint No.1205/2022 dated 11.07.2022.

2. Precise submission made by learned counsel for the petitioner is that the petitioner was prosecuted in the criminal complaint bearing No.1205/2022 dated 11.07.2022 filed under Section 138/142 of



the Negotiable Instruments Act, 1881 read with Section 420 IPC. She has submitted that in order to discharge his existing liabilities towards the complainant, the petitioner issued a cheque bearing No.318051 amounting to Rs.30,00,000 dated 28.02.2022 drawn on Punjab National Bank to the complainant. She has submitted that the said cheque was returned to the complainant as dishonored by the Bank with the remarks “Advice not received” vide memo dated 20.05.2022. She has submitted that a legal notice dated 14.06.2022 was served upon the petitioner through registered notice demanding from accused to make payment of the cheque amount. She has submitted that when allegedly the petitioner failed to make the payment within 15 days from the date of receipt of legal notice and thus, the complainant filed the complaint dated 11.07.2022 under Section 138/142 of Negotiable Instruments Act read with Section 420 of IPC in the Court of learned Judicial Magistrate First Class, Yamuna Nagar at Jagadhri against the petitioner on false and frivolous allegations. She has submitted that vide order dated 11.07.2022, the learned Judicial Magistrate Ist Class issued notice to the petitioner for 19.01.2023. She has submitted that on 19.01.2023, the trial Court observed that as per the report of Ahlmad, summons issued to the petitioners were not received back in any form and thus, the petitioner is ordered to be served by way of fresh summons for 22.08.2023. She has submitted that on 22.08.2023, the learned trial Court observed that summon issued against the petitioner received back with the report of refusal and he has not come present and thus, presence of petitioner be



secured through bailable warrant in the sum of Rs.10,000/- with one surety in like amount returnable for 17.10.2023. She submits that the case was again adjourned to 10.01.2024 and on 10.01.2024, bailable warrants issued against the petitioner received back unexecuted and fresh bailable warrant in the sum of Rs.10,000/- with one surety in the like amount be issued for 28.05.2024 and the complainant was directed to accompany the serving constable to ensure the service. She has submitted that on 28.05.2024, the trial Court observed that bailable warrants issued against the petitioner were received back with the report that accused house was found locked and thus, the learned trial Court issued non bailable warrants for 07.08.2024. She has further submitted that on 07.08.2024, warrant of arrest issued against the petitioner received back executed however he did not come present and thus, the presence of petitioner was ordered to be procured by way of proclamation as per Section 84 of BNSS, 2023 requiring the petitioner to appear before the Court on 22.10.2024. It has been submitted that on 22.10.2024, the learned trial Court declared the petitioner as proclaimed offender without following the proper procedure prescribed by law. She has submitted that warrants/notice/proclamation were ever issued at the address given by the complainant and the petitioner had never refused to take any notice. She has submitted that the petitioner came to know about the complaint from police officials when they call the petitioner and informed about the PO order. She has submitted that the petitioner is a resident of Rohtak and the criminal complaint was filed in Yamuna Nagar, thus, he was not aware of



the proclamation proceedings initiated against the petitioner in Yamuna Nagar. She has fairly submitted that the petitioner is ready to appear and join the proceedings 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 proclaimed offender 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 initiated due to dishonor of the cheque amounting to Rs.30,00,000/-. 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 when the



petitioner is ready to join the main proceedings, continuation of the present proceedings with regard to proclaimed person shall be an abuse of the process of the Court.

7. Consequently, the order dated 22.10.2024 (Annexure P-3) passed by the learned Judicial Magistrate First Class, Yamuna Nagar at Jagadhri vide which the proclamation has been issued and petitioner has been declared as proclaimed person in complaint under Section 138/142 of Negotiable Instruments Act read with Section 420 IPC titled as M/s Vintech Land & Infrastructure Pvt. Ltd. vs. Abhimanyu Silwal numbered as 1205/2022 dated 11.07.2022 along with consequential proceedings arising out of the same, is hereby set aside subject to payment of costs of Rs.5,000/- to be paid by the petitioner to the complainant within 10 days from today.

8. The petitioner is directed to appear before the Court of learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri within a period of 10 days from today and file an appropriate application along with cost of Rs.5,000/- and the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri 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.5,000/- 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.



9. Needless to say that in case the petitioner fails to pay the cost and comply with the aforesaid direction, the order under challenge dated 22.10.2024 would come in force and the present petition would be deemed to have been dismissed.

10. Disposed of.

06.11.2024
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(RAJESH BHARDWAJ)
JUDGE

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