

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

CRM-M-60732-2023 (O&M)

Date of Decision: 16.01.2024

2024: PHHC: 006028

M/S CLASSICAL LIGHTING INDUSTRY

. . . . Petitioner

Vs.

State of Punjab and another

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Neeraj Jain, Advocate, for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab, for respondent No.1.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioner prays for quashing/setting aside order dated 05.09.2023 passed by Id. JMIC, Rajpura, vide which proclamation proceedings have been initiated against the petitioner in criminal complaint bearing No.COMA-546-2017 titled 'Shiv Om Industry Vs. M/s Classical Lighting Industry'.

2. Counsel for the petitioner has been heard at length and the paper-book has been perused.

3. It is revealed that criminal complaint in question i.e., COMA-546-2017 (Annexure P1) was filed by respondent No.2-Shiv Om Industry to prosecute the accused M/s Classical Lighting Industry through its proprietor Sudhir Kumar (petitioner herein) under Section 138 of the Negotiable Instruments Act, 1881 [for short 'the NI Act']. Petitioner was on bail in that case. Total five complaints had been filed by the complainant regarding dishonour of the cheque. Petitioner had filed a quashing petition bearing

CRM-M-8777-2022 against the complainant-respondent. The said CRM-M-8777-2022 was dismissed by Coordinate Bench of this Court on 04.09.2023. Said order reads as under: -

“As per the Office report, service is complete.

Today, there is no representation on behalf of the petitioner.

I have gone through the contents of the petition along with the documents annexed with it.

Prayer in this petition is for quashing of complaint bearing No.COMA-546-2017 dated 27.07.2017 filed under Section 138 of the Negotiable Instruments Act, 1881, read with Section 420 IPC titled as Shiv Om Industries vs M/s Classical Lighting Industry, pending before the Court of learned Judicial Magistrate, 1st Class, Rajpura, along with all the subsequent proceedings arising therefrom.

On 11.03.2022, on an undertaking given by the learned counsel for the petitioner that the petitioner would deposit a sum of ₹2,15,000/-, the proceedings before the trial Court were stayed by the Coordinate Bench of this Court. The order dated 11.03.2022 passed by a Coordinate Bench of this Court, would read as under:-

‘This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

Learned counsel for the petitioner submits that all these petitions arise out of dispute relating to cheque dishonour and the total amount of all the cheque collectively comes to Rs.2.15 lakhs (approximately).

Learned counsel submits that the petitioner is ready and willing to repay the entire amount. He submits that in order to show his bona fides, he shall submit an amount of Rs.1.15 lakhs with the Registry of this Court within a period of two weeks from today and to pay the balance amount within a period of 01 month thereafter.

Notice of motion.

Proceedings qua the petitioner before the trial Court shall remain stayed till the next date of hearing, subject to the petitioner depositing the amount with the Registry of this Court as per the statement made by learned counsel for the petitioner.

To come up for further consideration on 04.05.2022.

Photocopy of this order be placed on the file of connected cases'.

However, till date, the said order has not been complied with, inasmuch as, the cheque amount was not deposited, as would decipher from the report of the Registry.

Thereafter, vide order dated 04.05.2022 passed by the Coordinate Bench of this Court, another opportunity was granted to the petitioner to deposit the said amount, subject to payment of costs of Rs.3,000/- with the District Legal Aid Service Authority, SAS Nagar, Mohali and the following order was passed:-

“A perusal of the office report would show that notice to respondents could not be issued for want of process fee.

Learned counsel appearing on behalf of the petitioner undertakes to file the process fee within a period of three days from today.

Let fresh notice to respondents be issued upon filing of process fee.

It is further noticed that the necessary deposit in terms of the order dated 11.03.2022 passed by this Court has not been made so far.

An undertaking on the part of the petitioner to make the alleged deposit was recorded in the order dated 11.03.2022 and the petitioner had averred that the entire amount would be deposited within a period of one and a half month from the date of passing of said order. It is evident that the petitioner has not complied with the said order of making the deposit despite the undertaking given by him.

Learned counsel for the petitioner prays for grant of two weeks' extension to deposit the entire amount in terms of the undertaking given by him.

No valid reason has been given by the petitioner for his failure in complying with the order dated 11.03.2022 despite his undertaking, however, as a concession, the petitioner is granted a period of two more weeks to make the deposit in terms of his undertaking recorded vide order dated 11.03.2022, but this shall be subject to payment of costs of Rs.3,000/- per case/petition to be deposited by the petitioner with the District Legal Aid Services Authority, S.A.S. Nagar, Mohali.

Needless to mention that in case the deposit of the amount in terms of order dated 11.03.2022 is not made within the extended period of two weeks i.e., on or before 19.05.2022, the instant petition shall be dismissed without any reference to this Court and proceedings of recovery of costs shall be initiated by the Illaqa Magistrate/Trial Court.

To come up on 13.07.2022 for further consideration.

Photocopy of this order be placed on the files of other connected cases”.

It was specifically stipulated in the said order that in case the amount was not deposited by the petitioner and costs not paid, the present petition shall be dismissed without any reference to this Court and the proceedings of recovery of costs shall be initiated by the Illaqa Magistrate/trial Court.

However, as noticed above, till today, the aforesaid order has again not been complied with, as would decipher from the subsequent report of the Registry.

It may be noticed that the petitioner himself had undertaken to deposit the aforesaid amount. However, despite having availed two opportunities, the petitioner has failed to either deposit the said amount or the costs. It seems that the petitioner is taking the judicial process for granted. The petitioner cannot be allowed to enjoy the interim protection at the costs of violation of the orders passed by this Court.

In view of the above, this Court finds no justification to grant any further indulgence to the petitioner.

Dismissed.”

4. It is revealed further that in the complaint in question i.e., No.COMA-546-2017, petitioner failed to appear on 30.11.2022 and then on 02.01.2023. Matter was adjourned to 01.03.2023 by directing serving of the notice upon him.

5. On 01.03.2023, following order was passed by the trial Court, as available on page No.18 of the paper book: -

“Perusal of the file shows that the proceedings before the Trial Court was stayed vide order dated 11.03.2022 by the Hon'ble High Court till next date of hearing i.e., 04.05.2022. Perusal of the order dated 04.05.2022 shows that petitioner/accused was directed to deposit the amount as per order dated 11.03.2022 and on the failure of the same, the trial court was directed to initiate the recovery proceedings of the costs. As per report of Ahlmad no order has been received from the Hon'ble High Court post order dated 04.05.2022.

The complainant who is present in the court stated that he is not aware whether the accused has deposited the amount as per order dated 11.03.2022 before the Registry of Hon'ble High Court.

The Hon'ble High Court has directed the trial court to initiate the recovery proceedings against the petitioner/accused if in case do not comply with the order dated 11.03.2022 passed by Hon'ble High Court. Consistent absence of accused in the present case shows that he is playing hide and seek with the court. As on the one hand he has filed writ petition before the Hon'ble High Court showing his willingness to repay the entire amount whereas neither he has appearing before the court of undersigned nor he complied with the order of Hon'ble High Court which is also reflected in the order of dated 04.05.2022 of the Hon'ble High Court. Thus, under such circumstances it can be safely relied that the accused has not complied with the order dated 11.03.2022. The Hon'ble High Court vide order dated 04.05.2022 has directed the trial court to initiate the recovery proceedings of the cost, however, the complainant vide his separately recorded statement stated that he will furnish the list of property of accused on the next date of hearing. Let, warrants of attachment of property of accused be issued for 22.03.2023 on filing list of property of accused within three days.

Today accused Sudhir Kumar has not come present despite repeated calls nor any intimation has been received on his behalf. Hence, his bail order is cancelled and his bail bonds are forfeited in favour of the State. Let, accused Sudhir Kumar be summoned through non-bailable warrants of arrest for 22.03.2023. Notice to his surety under section 446 Cr.P.C be also issued for the date fixed."

6. The aforesaid order would not only show the conduct of the petitioner, but also the circumstances, in which his bail was to be cancelled. As the warrant of arrest issued against the petitioner failed to procure his presence, proclamation was directed to be issued under Section 82 CrPC and ultimately, he was declared proclaimed person vide impugned order dated 05.09.2023 (Annexure P2).

7. Counsel for the petitioner submits that petitioner is ready to pay the cheque amount and to resolve the issue with respondent No.2 and so, in these circumstances, the impugned order be set aside.

8. The order dated 04.09.2023, as passed by this Court in CRM-M-8777-2022, in itself is sufficient to show the conduct of the petitioner apart from the order dated 01.03.2023 of the trial court, showing the circumstances in which, the bail of the petitioner was cancelled.

9. Having regard to all the facts and circumstances and overall conduct of the petitioner, this Court finds no illegality in the impugned order nor finds any ground to interfere in the same.

Dismissed.

Pending application(s), if any, stand disposed of.

16.01.2024

Vivek

(DEEPAK GUPTA)
JUDGE

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes
No