

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCRM-M-65471 of 2023(O&M)
Date of Decision: 18.01.2024

Parampal Singh Sandhu

...Petitioner

Versus

Union Territory, Chandigarh & Anr.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. A.S. Sivia, Advocate
For the petitioner.

Mr. Manish Bansal, P.P., UT Chandigarh.

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioner seeking quashing of order dated 11.10.2019 (Annexure P-2) whereby the petitioner is declared as proclaimed person in criminal complaint No. 1676 of 2019, titled as Kotak Mahindra Bank Vs. Parampal Singh, under Section 138 of Negotiable Instruments Act (for brevity, the Act), by the learned trial Court.

2. The counsel for the petitioner, *inter alia*, contends that the impugned order is not sustainable as the same was not passed in accordance with the provisions of Section 82 Cr.P.C. That 30 days' clear period was not given to the petitioner to appear in the Court concerned from the date of publication of proclamation as mandated by Section 82 Cr.P.C. It is further submitted that at the relevant time when the impugned order was passed, the petitioner was in Canada and in this regard copy of the passport of the petitioner was produced which is taken on record. It is further submitted that no notice or warrants were ever received by the petitioner in foreign country through the Embassy concerned. It is further submitted that the impugned

order deserves to be set aside and that the petitioner is ready to join the proceedings before the trial Court as offence under Section 138 of the Act is bailable offence.

3. Mr. Manish Bansal, P.P. U.T. Chandigarh, who is having advance notice of the petition, has put in appearance on behalf of U.T. Chandigarh and while resisting the present petition submits that there is no illegality or infirmity in the impugned order and that the present revision petition is devoid of merits.

4. I have considered the submissions made by counsel for the parties.

5. From the perusal of Annexure P-3, it appears that the complaint was filed by respondent No.2 Bank against the petitioner under Section 138 of the Act on 02.03.2019 and thereafter summoning order was passed and the petitioner did not respond to the notice and thereafter warrants of arrest of the petitioner were issued and finally proclamation under Section 82 Cr.P.C. was issued by the learned trial Court for 27.09.2019 vide order dated 27.08.2019. As per the statement recorded by the serving Head Constable, the said proclamation was effected on 31.08.2019 and the petitioner was given time to appear before the Court concerned on 27.09.2019. Thus, it appears that time period of 30 days as per the mandate of Section 82 Cr.P.C. was not given to the petitioner for his appearance before the Court concerned and on this sole ground the impugned order deserves to be set aside in the light of the law laid down by this Court in **Ashok Kumar Vs. State of Haryana**, CrI. Misc. No. M-13638 of 2013, decided on 05.08.2013.

6. From the perusal of the aforesaid statement of serving Head Constable it also appears that the proclamation was not publically read in some conspicuous place of the town or village in which the petitioner

ordinarily resides, as per the provisions of Section 82 (2)(i)(a) Cr.P.C. Furthermore, it appears that at the relevant time the petitioner was in foreign country and no notice regarding pendency of the complaint was sent to the petitioner through Embassy of the concerned country.

7. In the light of above, without commenting on the merits of the case the present petition is allowed and the impugned order dated 11.10.2019 (Annexure P-2) is hereby set aside.

8. The offence under Section 138 of the Act being bailable, the petitioner is given one month's time to appear before the trial Court and to seek regular bail.

18.01.2024
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(KARAMJIT SINGH)
JUDGE

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