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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2628/2023 and CRL.M.A. 9894/2023

JAISHREE

..... Petitioner

Through: Ms. Purti Gupta, Advocate

versus

STATE & ANR.

..... Respondent

Through: Mr. Aashneet Singh, APP for State.

Ms. Nikita Rana, Mr. K.K. Mishra, Ms. Tanvi

Jain, Mr. Nikhil Maan and Mr. Sahil Nagpal,

Advocates for respondent No.2

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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15.02.2024

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner seeks quashing of the order dated 05.12.2019 passed by learned Metropolitan Magistrate, Rohini Court, New Delhi in C.C. No. 1596/2018 whereby petitioner was declared proclaimed offender.

2. Notably, the impugned order was passed in the proceedings arising out of a criminal complaint filed under Sections 138 and 142 of the Negotiable Instruments Act ('NI Act') and Section 420 IPC. After pre-summoning evidence, the petitioner alongwith others was summoned by the trial court. The summons remained unserved with the process server remark '*left the address*'. Bailable warrants as well as non-bailable warrants were issued however, the same remained unexecuted with the remark '*accused has closed down their official address*' and '*accused are not traceable*' respectively. Resultantly, proceedings under Section 82 Cr.P.C. were



initiated and vide order dated 05.12.2019, the petitioner alongwith the co-accused was declared proclaimed offender. Further, vide order dated 25.02.2020, direction was given to register an FIR under Section 174A IPC.

3. Learned counsel for the petitioner contended that the petitioner could not have been declared a proclaimed offender and in this regard, has referred to the decision of this Court in Sanjay Bhandari v. State (NCT of Delhi)¹ and in Mohd. Haris Usmani v. State (N.C.T. of Delhi)². It is further contended that the proceedings initiated under Section 82 Cr.P.C. against the petitioner were liable to be set aside as the summons were never served at her address. In this regard, he has relied upon the report of the process server dated 13.07.2018 which showed that the process was sought to be served at *House No.2A, 4th Floor, Jia Sarai, New Delhi-110016*. He further submits that even as per the statement of *Ambika Thakur*, who was found residing at the said address, the petitioner was a resident of *A-1/130, Paschim Vihar, New Delhi-110063*. The records show that despite the aforesaid information coming on record, no efforts were made to serve the petitioner at the said address. It is also informed that the proceedings under Section 138 NI Act have been stayed in view of the proceedings initiated under Section 9 IBC by the complainant.

4. Learned counsel for the petitioner also contended that the petitioner was not aware of the proceedings initiated under Section 138 of NI Act, as no summons were ever received by her.

5. Learned counsel for respondent No.2 however, has stated that the petitioner was aware of the criminal complaint filed under Section 138 NI

¹ 2018 SCC OnLine Del 10203

² 2021 SCC OnLine Del 5335



Act and that she had appeared before the NCLT, wherein in the petition filed under Section 9, the pendency of proceedings under Section 138 NI Act was disclosed.

6. Considering that in spite of the fresh address of the petitioner coming to notice vide statement of *Ms. Ambica Thakur* on record, the process was issued at the old address and also that declaration of a person as proclaimed offender (proclaimed person, in the present case) has serious implications, this Court deems it appropriate to set aside the proceedings initiated under Section 82 Cr.P.C. against the present petitioner subject to payment of cost of Rs.10,000/- to be deposited with the Delhi State Legal Services Authority within a period of three weeks from today.

7. The petition is disposed of in the above terms alongwith the pending application.

MANOJ KUMAR OHRI, J

FEBRUARY 15, 2024

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