



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

CRM-M-1831-2025

Date of decision: 15.01.2025

KULDIP KAUR

...PETITIONER

V/S

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anmol Puri, Advocate for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of proclamation order dated 24.03.2023 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Ferozepur in a complaint filed under Sections 138/142 of Negotiable Instruments Act read with Section 420 IPC.

2. Brief facts of the case as alleged are that the petitioner and her husband allured respondent No.2 that the petitioner has great relations with Education Department and they assured respondent No.2 that they will get him appointed as government teacher and for this purpose, the petitioner obtained an amount of Rs.4,50,000/- from respondent No.2. Thereafter, the petitioner agreed to return the above-said amount as she has failed to get the job for the complainant/respondent No.2 and issued a cheque bearing No.408060 dated 16.03.2021 in his favour, which, after presenting for encashment, got dishonoured with remarks "Account Closed". Hence the complaint.

3. Learned counsel for the petitioner *inter alia* contends that proclamation was issued against the petitioner without following the drill of Section 82 Cr.P.C. and non-compliance of the mandatory provisions vitiates the entire proceedings, which suffers from incurable illegality as she was never served and the impugned order is liable to be set aside.



4. Notice of motion.

5. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in the Court, accepts notice on behalf of respondent No.1-State and supports the order passed by the learned trial Court by contending that the petitioner did not put in appearance before the trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure his presence.

6. I have heard learned counsel for the petitioner and perused the record of the case with his able assistance, the matter is taken up for final disposal.

7. While the scheme of criminal justice system necessitates curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

8. A perusal of the impugned order reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioner has absconded or is concealing himself. This Court in the judgment passed in ***Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506*** has held that the Court is first required to record its satisfaction before issuance of process under Section 82 of Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in ***Sonu Vs. State of Haryana 2021 (1) RCR (Crl.) 319***, it has been held that the conditions specified in



Section 82 (2) Cr.P.C. for the publication of a proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity.

9. The sole purpose of issuance of non-bailable warrants or issuance of proclamation is to secure presence of the accused before the trial Court. The petitioner in the present case has herself come forward and a compromise has also been effected between the parties.

10. In view of the aforesaid facts and circumstances and in view of the ratio of law laid down in **Major Singh @ Major** (*supra*), the present petition is allowed and the impugned order dated 24.03.2023 (Annexure P-3), vide which, the petitioner was declared proclaimed person is quashed.

11. The petitioner is directed to appear before the trial Court within a period of two weeks from today and on her doing so, she shall be admitted to bail on her furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.10,000/- to be deposited with the Poor Patients Welfare Funds, PGIMER, Chandigarh for wasting precious time of the Court.

12. Receipt of payment of cost must be presented before learned trial Court and learned trial Court is directed to verify the same.

13. It is made clear that in case, the petitioner fails to appear before the trial Court within a stipulated period, the interim protection granted by this Court shall be deemed to be vacated.

January 15, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

- (i) Whether speaking/reasoned
- (ii) Whether reportable

Yes/No
Yes/No