

125

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6627-2025
Date of decision: 05.02.2025

Rakesh Kumar Hooda

....Petitioner

Versus

M/s VPBA Mittal Finance Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sukhdev Singh, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing of order dated 06.06.2022 (Annexure P-12) vide which the petitioner has been declared as proclaimed person and along with all consequential proceedings arising therefrom.

2. Learned counsel appearing for the petitioner *inter alia* contends that a complaint under Section 138 of the Negotiable Instruments Act was filed against the petitioner on the ground of dishonouring of cheque bearing No.070476 dated 15.08.2019 amounting to Rs.1,00,000/- issued in favour of the complainant/respondent by the petitioner in discharge of his liability. The petitioner was summoned under Section 138 of the Act vide summoning order dated 21.01.2020. Thereafter, the case was adjourned on number of occasions. On 10.08.2021, 06.10.2021 and 06.12.2021, despite the fact that the non-bailable warrants issued against the petitioner were received back unserved, the

learned trial Court issued proclamation under Section 82 of Cr.P.C. against the petitioner. On 27.01.2022, the case was adjourned due to COVID-19 pandemic and thereafter, on 01.04.2022, fresh proclamation was issued. Ultimately, on 06.06.2022 (Annexure P-12), the trial Court declared the petitioner as proclaimed person. Aggrieved by the said impugned order dated 06.06.2022 (Annexure P-12), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the non-bailable warrants issued to the petitioner were never served and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Ultimately, vide impugned order dated 06.06.2022 (Annexure P-12), the petitioner has been declared as proclaimed person. It is contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court.

4. It is also submitted that to show his *bonafide*, the petitioner is ready to pay Rs.25,000/- by way of demand draft, to the respondent and he undertakes to appear before the trial Court on each and every date.

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

6. 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.

7. 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.

8. 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 himself come forward and has undertaken to appear before the trial Court on each and every date.

9. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to the respondent in order to save time of the Court and to avoid litigation expenses to be incurred on the part of the respondent and the impugned order dated 06.06.2022 (Annexure P-12) vide which the petitioner was declared as proclaimed person, is hereby set aside.

10. The petitioner is directed to appear before the trial Court within a period of two weeks from today and on his doing so, he shall be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of the trial

Court subject to deposit of Rs.25,000/- in the shape of demand draft by the petitioner which shall be handed over to the respondent

11. However, in case, the petitioner fails to surrender before the learned trial Court within the stipulated time period, the interim protection granted by this Court, shall be deemed to be vacated.

(HARPREET SINGH BRAR)
JUDGE

05.02.2025
Neha

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