



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

135

CRM-M No.8246 of 2025
Date of decision: 13.02.2025

Vipin

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Y.D. Kaushik, Advocate
for Mr. Sachin Kaushik, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 528 of BNSS, 2023, for quashing of order dated 16.01.2025 (Annexure P-2) passed by learned Sub-Divisional Judicial Magistrate, Gohana, in complaint bearing NACT No.226 of 2021, filed under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the NI Act'), titled as "Vivek Deswal vs Vipin, etc." whereby the petitioner was declared as proclaimed person.
2. Learned counsel appearing for the petitioner, *inter alia*, contends that a complaint under Section 138 of the NI Act was filed against the petitioner on the ground of dishonouring of cheque bearing No.482825 dated 25.08.2021 amounting to Rs.4,60,000/- issued in favour of the complainant by the petitioner in discharge of the liability

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and the petitioner was subsequently summoned by the learned trial Court.

3. Learned counsel for the petitioner further submits that the petitioner was appearing before the learned trial Court but was wrongly declared as proclaimed person on 16.01.2025 (Annexure P-2) due to absence only on 18.05.2024. It is further 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. Lastly, learned counsel for the petitioner submits that the petitioner undertakes to appear before the trial Court on each and every date of hearing.

4. Notice of motion.

5. Ms. Geeta Sharma, DAG, Haryana who is present in the Court, accepts notice on behalf of respondent – State and supports the order passed by the learned trial Court by contending that the petitioner did not put in appearance before the learned trial Court intentionally and deliberately and, therefore, having left with no other option, the proclamation was issued to secure his presence.

6. I have heard learned counsel for the parties and perused the record of the case with their able assistance and with the consent of parties, 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

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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.

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 himself/herself come forward and has undertaken to appear before the trial Court on each and every date of hearing.

10. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 16.01.2025 (Annexure P-2), vide which the petitioner was declared proclaimed person as well as all the consequential proceedings emanating therefrom, are hereby set-aside.

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11. The petitioner is directed to appear before the learned trial Court within a period of 02 weeks from today and on doing so, he shall be admitted to bail on furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.10,000/- to be deposited with PGIMER Poor Patient Welfare Fund, Chandigarh, for wasting precious time of the Court.

12. The receipt of payment of costs imposed upon the petitioner must be presented before learned trial Court. Learned Court below is directed to grant bail to the petitioner only upon verification of the payment of said costs.

13. 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

13.02.2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No