



CRM-M-56318-2023

**205 IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH**CRM-M-56318-2023
Decided on:02.09.2025

Harish Bagla

.... Petitioner

versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJPresent: Mr. G.S.Sullar, Advocate with Mr. D.A.Sullar, Advocate
Mr. Haneesh Kumar, Advocate
for the petitioner.

Mr. Vivek Chauhan, Addl. AG, Haryana.

Vinod S. Bhardwaj, J. (oral)

Present petition has been filed under Section 482 CrPC for setting aside the complaint bearing No.NACT-856-2017 dated 23.08.2017 registered under Section 138 and 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') titled as 'M/s Longowal Enterprises vs. M/s Amrit Feeds Ltd. and others' along with the order dated 19.08.2023 (Annexure P-10) whereby the petitioner has been declared a proclaimed person.

2. Learned counsel for the petitioner contends that the aforesaid complaint had been instituted before the Judicial Magistrate, 1st Class, Panchkula and the petitioner has been declared a proclaimed person. He contends that the complainant-respondent No.2 firm was engaged in the trade of supplying poultry feed to the petitioner. The business relationship between the parties turned sour due to certain payment disputes. A memorandum of settlement dated 21.06.2016 was later entered into between the complainant as well as petitioner for a total sum of Rs.68,00,000/-. Ten post cheques were



CRM-M-56318-2023

issued for payment of the said settlement amount and discharge of liability. Nine out of ten cheques were duly honoured as scheduled, however, the cheque bearing No.678177 dated 21.03.2017 issued by the petitioner-firm for a sum of Rs.8,38,727/- was dishonoured on presentation. Learned counsel contends that a legal notice dated 11.07.2017 was even though claimed as having been issued, however, the same was not served upon the petitioner. The complaint under Section 138 of the Act was accordingly filed. The address of all the accused persons has been mentioned as 158, Lenin Sarani, Kolkata-700013 in the complaint, which is the office address of three companies. He contends that since the physical possession of the property situated at 158, Lenin Sarani, Kolkata had already been taken by the Punjab National Bank, notice and summons could not be served upon the petitioner. Vide order dated 08.12.2017, the trial Court held that there was no liability of accused Nos. 1 to 3 as the cheque in question had been signed only by accused No.4, i.e. petitioner herein. Accordingly, while discharging all the other accused, summons were issued for the petitioner.

Learned counsel further contends that, notwithstanding the trial Court acknowledging that the petitioner was not residing at the given address, proceedings under Section 82 CrPC were none-the-less initiated and the petitioner was declared a proclaimed person without ensuring the affixing of the proclamation at a conspicuous part of the house or homestead where the accused ordinarily resides.

Learned counsel contends that, notwithstanding the other remaining merits, at the time when the present petition was taken up for preliminary hearing on 08.11.2023, after noticing the submissions of the petitioner, the following order was passed:



CRM-M-56318-2023

“Learned counsel for the petitioner at the outset contends that he is ready to pay the amount in question along with 10% as compensation in order to compound the offence under Section 138 of the Negotiable Instruments Act. He further contends that the trial Court has declared the petitioner as proclaimed person without following the drill of Section 82 Cr.P.C. neither the summons were served upon the petitioner nor bailable or non-bailable warrants were executed. The correct address of the petitioner was never provided by respondent No.2 to the learned trial Court and the learned trial Court has proceeded to declare the petitioner as proclaimed person without any application of mind and in a mechanical manner.

Notice of motion.

Mr. Gurmeet Singh, AAG, Haryana puts in appearance and accepts notice on behalf of respondent No.1-State.

Process qua respondent No.2 be issued for 05.01.2024.

Process be given dasti as well.

In the meanwhile, the operation of the impugned order dated 19.08.2013 (Annexure P-10) shall remain stayed subject to deposit of the cheque amount along with 10% of the cheque amount as compensation in the Registry of this Court within three weeks.”

3. It is submitted that in terms of the undertaking given by the petitioner to repay the amount in question along with 10% as compensation and seeking compounding of the offence under Section 138 of the Act, a demand draft bearing No.180781 dated 23.11.2023 amounting to Rs.9,22,600/- in favour of 'M/s Longowal Enterprises' was deposited with the Registry of this Court. He contends that the petitioner had sought liberty to serve respondent No.2 through his counsel, Mr. Amandeep Bindra, Advocate appearing for the respondent before the trial Court, however, even the said counsel has passed away and the respondent No.2- firm remains unserved.



CRM-M-56318-2023

4. Learned counsel for the petitioner contends that the original complaint had been consigned to the Record Room after the petitioner was declared a proclaimed person. The proceedings for attachment of the property of the petitioner had thereafter been initiated by the Illaqa Magistrate, however, as no one entered an appearance on behalf of the complainant, even the said criminal miscellaneous application has been dismissed for want of prosecution. Learned counsel undertakes that the demand draft of Rs.9,22,600/- deposited with the Registry of this Court and pending in the safe custody of the Cash Branch since then would be furnished afresh before the Illaqa Magistrate, within a period of four weeks from today. Under the given circumstances, it has become difficult to trace the correct address of the complainant. It would, however, not be apt for this Court to keep the litigation pending against the petitioner, who has established his credentials by depositing the amount.

5. Accordingly, Ms. Dheeraja Kalra, Advocate, who is present in Court, is appointed as a legal aid counsel. She has gone through the case file and does not dispute that under circumstances, when the entire amount and compensatory cost is deposited, the Hon'ble Supreme Court has held that the proceedings under Section 138 of Negotiable Instruments Act can be quashed.

6. Considering the aforesaid developments and circumstances wherein the complainant-respondent has not been pursuing the remedies and is unavailable for effecting service and also noticing that the entire amount of cheque along with interest @ 10% has already been deposited with the Registry of this Court, I am of the opinion that the proceedings under Section 138 of the Act are per se civil proceedings and primarily intended to ensure that the payment in question is released. The ends of justice would be met in case the interests of both parties are secured and balanced.



CRM-M-56318-2023

7. Hence, the complaint as well as the order dated 19.08.2023, declaring the petitioner as a proclaimed person are set aside subject to the petitioner submitting a fresh demand draft for a sum of Rs.9,22,600/- with the Judicial Magistrate, 1st Class, Panchkula dealing with complaint No.NACT-856-2017 dated 23.08.2017 within a period of four weeks. Let the demand draft be prepared afresh or renewed in the name of the Company or the person deputed or authorised by the Court. On receipt of the aforesaid amount, the same be ordered to be kept by the Court in a Fixed Deposit fetching the highest rate of interest and be released in favour of the complainant-respondent as per law.

8. The Present petition is accordingly allowed and the complaint bearing No. NACT-856-2017 dated 23.08.2017, registered under Section 138 of the Act as well as the order dated 19.08.2023, declaring the petitioner as a proclaimed person, are set aside.

02.09.2025
sonia

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No