

HIGH COURT OF PUNJAB AND HARYANA**Before: Harpreet Singh Brar, J.****Decided on: 12-12-2023**

CRM-M No. 62379 of 2023

BIRENDER SINGH**VERSUS****UNION TERRITORY OF CHANDIGARH AND ANOTHER****Legislation:**

Section 482 of the Criminal Procedure Code (Cr.P.C.)

Section 138 of the Negotiable Instruments Act, 1881

Section 82 of the Cr.P.C.

Subject: Petition under Section 482 Cr.P.C. for setting aside the order declaring the petitioner a proclaimed person in a complaint case under Section 138 of the Negotiable Instruments Act.**Headnotes:**

Proclaimed Person Declaration – Petitioner declared a proclaimed person by the Judicial Magistrate for non-appearance in a cheque dishonour case – Challenged under Section 482 Cr.P.C. – Impugned order dated 30.09.2023 questioned for procedural lapses and non-compliance with Section 82 of Cr.P.C. [Paras 1, 3]

Personal Appearance Exemption Failure – Petitioner's failure to appear due to medical reasons – Lack of application for exemption leading to declaration as proclaimed person and issuance of non-bailable warrants – Address discrepancy and procedural flaws in serving notices highlighted. [Paras 2, 3]

Legal and Procedural Requirements – Trial Court's non-compliance with mandatory conditions specified in Section 82 (2) Cr.P.C. – Requirement for recording satisfaction before issuance of proclamation – Cited precedents emphasizing the mandatory nature of these conditions. [Paras 9, 10]

Balancing Personal Liberty and Societal Interests – Emphasis on fair and reasonable procedures in line with Article 21 of the Constitution – Necessity for a balance between individual liberty and societal law and order interests. [Para 8]

Final Order and Directions – Petition allowed – Impugned order set aside – Petitioner directed to appear before the trial court within 15 days and furnish bail bonds and surety, with costs imposed for wasting court's time. [Paras 11, 12]

Referred Cases:

- Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506
- Sonu Vs. State of Haryana 2021 (1) RCR (Crl.) 319

Representing Advocates:

- Counsel for Petitioner: Not mentioned

- Mr. Tarun Vir Singh Lehal, Addl.P.P., for respondent No.1 (U.T. Chandigarh)

JUDGMENT

Harpreet Singh Brar, J. (Oral) - The prayer in the present petition under Section 482 Cr.P.C. is for setting aside the impugned order dated 30.09.2023 (Annexure P-5) passed by the learned Judicial Magistrate 1st Class, Chandigarh, whereby, the learned Magistrate declared the petitioner as proclaimed person in a complaint case bearing No. NACT/321/2019 under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act') titled as ' Punjab State Co-operative Vs. Birender Singh. '

2. Learned counsel appearing for the petitioner, inter alia, contends that a complaint under Section 138 of the Act was filed against the petitioner on the ground of dishonouring of cheque bearing No. 239947 dated 22.11.2018 amounting to Rs. 1,78,702/- issued in favour of the complainant/respondent No.2 by the petitioner in discharge of his liability. The petitioner was summoned under Section 138 of the Act vide summoning order and on 03.12.2019, he was admitted to bail on furnishing bail bonds. Thereafter, the petitioner was regularly appearing before the trial Court. It is further submitted that the petitioner was suffering from Chronic Pancreatitis, depression and other disease and also got admitted at Eden Critical Care Hospital, Industrial Area Phase-1, Chandigarh on 11.06.2022 and was discharged on 28.06.2022. He was further advised to take bed rest for 10 days. The petitioner informed the counsel who was representing him before the lower Court that he would not appear before the Court on 05.07.2022 but the

counsel did not file any application for exemption from his personal appearance due to which bail bonds/surety bonds of the accused/petitioner was cancelled and forfeited to the State and presence of the accused/petitioner was secured by issuing non-bailable warrants for 24.08.2022. Notice to his surety was also issued for the date fixed. Further proceedings were going on and to secure the presence of the petitioner, fresh proclamation was issued on 19.08.2023 to appear before the Court on or before 30.09.2023. On 30.09.2023, the trial Court declared the petitioner proclaimed person without satisfying himself as to the factum of service of notice upon the petitioner as respondent No.2 was unable to furnish the complete address of the petitioner and the proclamation was not sent to the petitioner at the correct address. Aggrieved by the said impugned order dated 30.09.2023 (Annexure P-5), 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 30.09.2023, 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 the petitioner undertakes to appear before the trial Court on each and every date.

5. Notice of motion.

6. Mr. Tarun Vir Singh Lehal, Addl.P.P., U.T. Chandigarh, who is present in Court, accepts notice for respondent No.1 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.

7. 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.

8. 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.

9. 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 nonrecording 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.

10. 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.

11. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to the respondent No.2 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of respondent No.2, the impugned order dated 30.09.2023 (Annexure P-5) vide which the petitioner was declared proclaimed person is set aside.

12. The petitioner is directed to appear before the trial Court within a period of 15 days 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, along with costs of Rs.10,000/- to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh for wasting precious time of the Court.

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