



211-2

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

CRM-M-17063-2024

Date of decision: 06.05.2025

Shivam Dhir

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Sunny K. Singla, Advocate
for the petitioners.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 01.11.2022 (Annexure P-3) passed by the learned Judicial Magistrate 1st Class, Malerkotla, in criminal complaint i.e. NACT/8/2021 dated 06.01.2021 titled as 'Rakesh Bansal Vs. Shivam Dhir' filed by respondent No.2 under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act') vide which the petitioner has been declared as proclaimed person.

2. Learned counsel appearing for the petitioners *inter alia* contends that a complaint under Section 138 of the Act was filed against the petitioners on the ground of dishonouring of cheque bearing No.958327 dated 02.11.2020 amounting to Rs.6,00,000/- 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 dated 04.03.2021 and it is submitted that petitioner has not received any summons. He further submits that in spite of submission of specific report before the



learned trial Court regarding the residence of petitioner at Ranchi, the learned trial Court has directed respondent No.2 to furnish correct address of the petitioner. Further, respondent No.2 has not submitted any correct address nor any summon has been issued. On 01.11.2022 (Annexure P-3), the trial Court declared the petitioner as proclaimed person. Aggrieved by the said impugned order dated 01.11.2022 (Annexure P-3), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that neither any warrants nor summons have been served to the petitioner and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Ultimately, vide impugned order dated 01.11.2022 (Annexure P-3), 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. Sandeep Kumar, DAG, Punjab for respondent No.1-State, 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 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 (CrI.) 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

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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 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 and the impugned order dated 01.11.2022 (Annexure P-3) vide which the petitioner was declared as proclaimed person, is hereby set aside.

12. The petitioner is directed to appear before the trial Court within a period of 04 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, along with costs of Rs.5,000/- to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

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

14. 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

06.05.2025*Neha*

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