

Before Suvir Sehgal, J.

RAHUL KUMAR—*Petitioner*

versus

STATE OF HARYANA AND ANOTHER—*Respondents*

CRM-M No. 19235 of 2020

July 17, 2020

Code of Criminal Procedure, 1973, Ss. 482, 82—Indian Penal Code, 1860, S.174-A—Negotiable Instruments Act, 1881, S.138, 141—Quashing of the order declaring the petitioner a Proclaimed Offender and directing registration of FIR—Dishonor of cheque—complaint under S.138 of the 1881 Act—Notice served on father—bailable warrants remained unexecuted—proclamation ordered to secure presence—Petitioner did not appear—declared Proclaimed Offender and SHO directed to register case—Challenge to, on grounds that the petitioner was not served at his place of residence—mandatory period of 30 days not given to appear before court—Held, complainant did not furnish correct address of the petitioner, therefore service of summons never effected on him—Magistrate’s order further service of summons never effected on him—Magistrate’s order further shows the mandatory provisions of S.82 not complied with—Proclamation effected for 20.06.2019 whereas the magistrate had fixed 21.09.2019 as the date for appearance—besides, the petitioner offered to surrender and furnish a bank guarantee equivalent to the amount of cheque—the order declaring him proclaimed Offender as well as the FIR under S.147-A quashed.

Held, that a perusal of the complaint, Annexure P-1, shows that the complainant-respondent No.2 did not furnish correct address of the petitioner. Therefore, service of the summons issued on the complaint under Section 138 of NI Act was never effected upon the petitioner. The proclamation under Section 82 Cr.P.C. was done in Village Lohari Ragho, District Hisar whereas the petitioner ordinarily resides and carries his business in Ratia, District Fatehabad. The interim orders further show that proclamation was effected for 20.06.2019 whereas the trial Magistrate had fixed 21.09.2019 as the date for appearance of the petitioner after proclamation. As a result, the mandatory provisions of Section 82 Cr.P.C. have not been complied with and the impugned

order dated 21.09.2019, Annexure P-7, and proceedings subsequent thereto are liable to be quashed.

(Para 7)

Further held, that furthermore, the provisions contained in Section 82 of the Code of Criminal Procedure have been enacted for a specific purpose, i.e. to secure the presence of the accused. Once that objective is achieved, the accused no longer remains an absconder. The petitioner has in all fairness not only offered to surrender and join the proceedings, but has also unequivocally offered to furnish a bank guarantee equivalent to the amount of the cheques in dispute. The offer by the petitioner seems sincere.

(Para 8)

Sandeep Siwach, Advocate, *for the petitioner.*

SUVIR SEHGAL J. (ORAL)

(1) This matter has been taken up for hearing through video conferencing due to Covid-19 Pandemic.

(2) This order shall dispose of the above noted two criminal miscellaneous petitions as they arise out of the same proceedings.

(3) Prayer made in CRM-M-19235 of 2020 is for quashing of order dated 21.09.2019, Annexure P-7, passed by the Judicial Magistrate Ist Class, Hisar in CIS No.N Act/1713 of 2018 titled **Baldev Vs. Kamboj** whereby the petitioner was declared a Proclaimed Person and FIR No.43 dated 29.01.2020 under Section 174-A of the Indian Penal Code registered at Police Station Barwala, District Hisar, Annexure P-8, along with all subsequent proceedings arising therefrom. In CRM-M-19089 of 2020, the petitioner has sought anticipatory bail in the said FIR.

(4) Facts, in brief, are that the complainant-respondent No.2, Baldev Munjal, had filed a complaint under Sections 138/141 of the Negotiable Instruments Act, 1881 (for short 'NI Act') against the petitioner herein on the allegation that the petitioner had purchased a car from the complainant for a total sale consideration of Rs.3 Lacs, out of which Rs.2 Lacs was paid in cash and the remaining amount of Rs.1 Lac was paid by way of two cheques of Rs.50,000/- each, which on presentation, were dishonoured. The petitioner was summoned by the JMJC, Hisar. The notice was served on his father and the bailable warrant issued to the accused was served upon his mother, but the petitioner did not appear despite service. He was, later, summoned

through nonbailable warrant which were received back unexecuted. By order dated 23.05.2019, Annexure P-5, the trial Magistrate recorded that the accused petitioner is absconding. The Court ordered that the presence of the petitioner be secured through proclamation under Section 82 of the Code of Criminal Procedure for 21.09.2019. By order dated 21.09.2019, Annexure P-7, the Court noticed that the mandatory period of 30 days from the issuance of proclamation against the petitioner had expired and he had failed to appear before the Court. He was declared as a Proclaimed offender and the SHO concerned was directed to register a case against him under Section 174-A of the IPC. As a consequence, FIR No.43 dated 29.01.2020, Annexure P-8, was registered against the petitioner under Section 174A of the IPC. The petitioner has challenged the order dated 21.09.2019, Annexure P-7 as well as the FIR, Annexure P-8.

(5) Counsel for the petitioner has argued that the mandatory provisions of Section 82 of the Code of Criminal Procedure have not been complied with. The petitioner was not served at the address where he resides. He has referred to the Adhar Card, Annexure P-9, to submit that he is residing at Ward No.14 Ram Nagar Colony, Ratia, District Faridabad since 2015 i.e. much before the institution of the complaint, Annexure P-1, whereas the proclamation was effected at Village Lohari Ragho, District Hisar. His second submission is that the mandatory period of 30 days had not been given to him to appear before the Court. He has referred to the order dated 21.08.2019, Annexure P-6, to submit that the proclamation had been done "for 20.06.2019". Counsel further submitted that in any case, the proceedings against him relate to a complaint case under Section 138 of NI Act which is a bailable offence. He submits that the petitioner will surrender before the trial court and furnish a bank guarantee of Rs.1 Lac.

(6) I have heard the counsel for the petitioner and gone through the paper book with his able assistance.

(7) A perusal of the complaint, Annexure P-1, shows that the complainant-respondent No.2 did not furnish correct address of the petitioner. Therefore, service of the summons issued on the complaint under Section 138 of NI Act was never effected upon the petitioner. The proclamation under Section 82 Cr.P.C. was done in Village Lohari Ragho, District Hisar whereas the petitioner ordinarily resides and carries his business in Ratia, District Fatehabad. The interim orders further show that proclamation was effected for 20.06.2019 whereas the trial Magistrate had fixed 21.09.2019 as the date for appearance of the

petitioner after proclamation. As a result, the mandatory provisions of Section 82 Cr.P.C. have not been complied with and the impugned order dated 21.09.2019, Annexure P-7, and proceedings subsequent thereto are liable to be quashed.

(8) Furthermore, the provisions contained in Section 82 of the Code of Criminal Procedure have been enacted for a specific purpose, i.e. to secure the presence of the accused. Once that objective is achieved, the accused no longer remains an absconder. The petitioner has in all fairness not only offered to surrender and join the proceedings, but has also unequivocally offered to furnish a bank guarantee equivalent to the amount of the cheques in dispute. The offer by the petitioner seems sincere.

(9) Consequently, the impugned order dated 21.09.2019, Annexure P-7, passed by the JMIC, Hisar declaring the petitioner as a proclaimed person and FIR No.43 dated 29.01.2020, Annexure P-8, under Section 147-A of the Indian Penal Code, registered at Police Station Barwala, District Hisar alongwith all subsequent proceedings arising therefrom are quashed subject to the following:-

- (i) The petitioner shall surrender before the trial Court within a period of one month from today i.e. on or before 17.08.2020 and join the proceedings;
- (ii) While surrendering the petitioner shall furnish a bank guarantee of Rs. 1 Lac, which he will ensure remains valid throughout till the disposal of the complaint, Annexure P-1; and
- (iii) Upon his doing so, the trial court shall release the petitioner on bail.

CRM-M-19235 of 2020 is allowed in the above terms.

(10) In view of the order which has been passed above, no separate orders are called for in CRM-M-19089 of 2020.

Dr. Payel Mehta