

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-12766 of 2014 (O&M)

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Date of decision:22.1.2015

Gurbax Kaur

...Petitioner

v.

State of Punjab and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Mandeep Singh Sachdev, Advocate for the petitioner.

Mr. Varun Sharma, Assistant Advocate General, Punjab
for the respondent-State.

Mr. Mohinder Kumar, Advocate for respondent No.2.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. for quashing of order dated 18.3.2014 (Annexure-P.1) and impugned order dated 3.3.2014 (Annexure-P.2) passed by the learned Judicial Magistrate Ist Class, Dasuya, vide which the petitioner has been declared PO and further application filed by him to recall PO order dated 3.3.2014 has been dismissed.

Notice of motion has been issued in this case.

Mr. Varun Sharma, learned Assistant Advocate General, Punjab has appeared on behalf of respondent-State and Mr. Mohinder Kumar, learned Advocate has put in appearance on behalf of the

respondent No.2 and contested this petition.

I have heard learned counsel for the petitioner as well as learned Assistant Advocate General, Punjab appearing for respondent-State and learned counsel appearing for respondent No.2 and have gone through the record, specially the impugned order dated 3.3.2014 (Annexure-P.2).

As per report under Section 173 Cr.P.C., the name of the complainant is Satnam Singh and the accused, who are not challaned are shown as Gurbax Kaur and Kuldeep Singh and it is written that PO proceedings are going on against Gurbax Kaur and Kuldeep Singh had died on 15.7.2013. The names of the accused, who are challaned etc. were also mentioned in the challan. As per the impugned order passed by the learned Judicial Magistrate Ist Class on 3.3.2014, SHO Garhdiwala filed application for dropping PO proceedings against accused Gurbax Kaur. Alongwith it, supplementary challan under Section 173 (8) Cr.P.C. have also been filed against accused Gurbax Kaur. It has been submitted by the SHO that an inquiry in this matter was pending which was conducted by Superintendent of Police (D) Jagmohan Singh and after detailed inquiry, she was found innocent. Hence, the PO proceedings under Sections 82 and 83 Cr.P.C. be stopped.

From the records, I find that PO proceedings under Sections 82 and 83 Cr.P.C. are to be started when any accused, who is required in those criminal proceedings, is avoiding service. This order shows that the present petitioner Gurbax Kaur was already declared innocent during the

inquiry and the statement and challan under Section 173(8) Cr.P.C. have been filed. Even in the main challan, it is written that against Gurbax Kaur challan has not been filed and PO proceedings are going on. These PO proceedings have been initiated during the investigation by the Police and the Police itself is saying that PO proceedings against Gurbax Kaur be dropped, which means that she is not required for investigation etc. in this case and challan is not to be filed against her. There is nothing on the record that the Court has disagreed with this report under Section 173(8) Cr.P.C. or has taken the cognizance. There is also no material on the record to show that the Court has summoned Gurbax Kaur under Section 190 Cr.P.C. or under Section 319 Cr.P.C. The Investigating Officer is saying that she is innocent and challan has not been presented against her. Therefore, in these circumstances, continuing with the PO proceedings despite the request of the SHO for dropping PO proceedings is not as per law. The mere fact that proclamation has been issued and 30 days time has passed only is not a ground for declaring the person proclaimed offender or proclaimed person.

It is also clear from this impugned order dated 3.3.2014 that earlier also criminal miscellaneous application for dropping PO proceedings has been filed, which has been dismissed on 26.2.2014. All these facts show that the petitioner was not required in that case by the Investigating Officer nor there is any order that the Court has summoned the present petitioner, therefore, in these circumstances continuing the PO proceedings against Gurbax Kaur was illegal.

Therefore, finding merit in the present petition, the same is accepted. The impugned order dated 3.3.2014 vide which the present petitioner has been declared as PO is set aside.

January 22, 2015.

(Inderjit Singh)
Judge

hsp