

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM-M-15951-2015
Date of decision:15.05.2015**

Birbal Yadav

...Petitioner

Versus

Parvesh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.M.K.Garg, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Petitioner, by way of present petition under Section 482 Cr.P.C., seeks quashing of order dated 19.9.2012 (Annexure P-4)- summoning order and also the order dated 28.7.2014 (Annexure P-5), whereby the petitioner was declared proclaimed offender.

Learned counsel for the petitioner submits that petitioner was not duly served. Learned trial Court proceeded on misconceived approach, while passing the impugned order declaring the petitioner as proclaimed offender. So far as summoning order is concerned, learned counsel for the petitioner submits that the impugned summoning order is patently illegal and the same is not sustainable in law. He prays for allowing the present petition, by setting aside both the above-said impugned orders.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant one has not been found to be a fit case, warranting interference at the

hands of this Court, while exercising its jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one which are being recorded hereinafter.

A bare perusal of the impugned summoning order dated 19.9.2012 (Annexure P-4) would show that the complainant has brought on record sufficient evidence against the petitioner which made a prima facie case for summoning the accused-present petitioner. This was the only requirement of law. Once the learned trial Court has recorded its satisfaction that prima facie case was made out against the petitioner, no fault can be found with the impugned summoning order, which clearly shows due application of mind on the part of the learned trial Court. Having said that, this Court feels no hesitation to conclude that the impugned summoning order has not been found to be suffering from any patent illegality and the same deserves to be upheld.

Coming to the next impugned order dated 28.7.2014 (Annexure P-5), when a pointed question was put to the learned counsel for the petitioner as to how the petitioner explains his non-appearance for a period of about two years, he had no answer and rightly so, because it was a matter of record. Petitioner has got nothing to explain in this regard. After having been summoned vide above-said order dated 19.9.2012 (Annexure P-4), petitioner was supposed to appear before the learned trial Court. However, he failed to do so, without there being any justified reason. Petitioner has been glaringly misusing the process of law for quite a long time. Further, he is still not ready to surrender before the learned trial Court to show his bonafide. The petitioner misconducted himself to such an extent that he does not deserve any sympathy of the court. Thus, the impugned order dated 28.7.2014 (Annexure P-5) also deserves to be upheld.

During the course of hearing, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality apparent on the record of the case, in either of the impugned orders passed by the learned trial Court so as to convince this Court to take a different view than the one taken by the learned court below.

Conduct of a litigant is one of the important factors for consideration by the courts. In the present case, petitioner has misconducted himself to such an extent that he is not entitled for any kind of discretionary relief, at the hands of this Court, while exercising its jurisdiction under Section 482 Cr.P.C. It is also pertinent to mention here that although the powers of this Court under Section 482 Cr.P.C. are wide enough, yet it is equally true that discretionary powers under Section 482 Cr.P.C. are to be exercised sparingly and with circumspection. The present case has not been found to be a justified one, warranting interference at the hands of this Court, while exercising its jurisdiction under Section 482 Cr.P.C.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noticed hereinabove, this Court is of the considered view that the present petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the instant petition stands dismissed.

15.05.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE