

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH****CRM-M-24226-2015**
Date of decision:27.7.2015

Mohamed Kadir

...Petitioner

Versus

State of Haryana

...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.Rakesh Dhiman, Advocate for the petitioner.**RAMESHWAR SINGH MALIK, J. (Oral)**

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure, seeks quashing of the order dated 20.1.2015 passed by the learned Chief Judicial Magistrate, Mewat, declaring the petitioner as proclaimed offender and also the order dated 9.7.2015 (Annexure P-7), whereby recalling of the above-said order was declined.

Learned counsel for the petitioner submits that petitioner has been illegally declared proclaimed offender. When he moved an application (Annexure P-5) for recalling the order dated 20.1.2015 (wrongly typed as 20.2.2015 in Annexure P-4), the learned trial court proceeded on misconceived approach, while dismissing the said application of the petitioner vide impugned order dated 9.7.2015 (Annexure P-7). In support of his contentions, learned counsel for the petitioner places reliance on the orders of this Court in CRM-M-37489-2010 (Sarabjit Rai v. State of Punjab) decided on 27.1.2011, CRM-M-36988-2011 (Likhma Ram v. State

of Punjab and another) decided on 7.12.2011, CRM-M-34238-2011 (Rahul Dutta v. State of Haryana) decided on 12.12.2011, CRM-M-9238-2012 (Yuvraj v. State of Haryana) decided on 22.8.2012 and CRM-M-24202-2011 (Sanjay Sarin v. State (Union Territory, Chandigarh) decided on 30.11.2012.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the 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 instant case, present one has not been found to be a fit case warranting interference, at the hands of this Court, for the following more than one reasons.

It is a matter of record that petitioner earlier approached this Court under Section 438 Cr.P.C., seeking anticipatory bail in this very FIR. That petition bearing CRM-M-17945-2015 was filed by the petitioner after he had already been declared proclaimed offender by the learned trial Court vide above-said order dated 20.1.2015 (Annexure P-4). The said petition filed by the petitioner was disposed of, by passing the following order, on 28.5.2015:-

“Petitioner seeks pre-arrest bail in FIR No. 728 dated 15.10.2013 under Sections 363/366/457/380 IPC, registered at Police Station Nuh, District Mewat.

Learned counsel for the petitioner submits that the petitioner has been illegally declared proclaimed offender. Initially, the petitioner was found innocent by the investigating agency. Petitioner has never avoided his arrest, because there was no occasion for him to do so, as he was found innocent by the investigating agency. He prays for allowing the present petition.

Having heard the learned counsel for the petitioner and without expressing any opinion on the merits of the case, lest it should prejudice the rights of either of the parties, present petition is disposed of with a direction to the petitioner to surrender before the learned trial court within a period of one week from today. On his doing so, learned trial court shall consider the bail application of the petitioner and decide the same, at an early date, by passing an appropriate order, strictly in accordance with law, and after considering all the attending circumstances.

With the abovesaid observations and directions issued, present petition stands disposed of.

From the perusal of the petition, it would show that petitioner is conveniently silent about the above-said order passed by this Court because there is not even a passing reference of the above-said order in the present petition. Learned counsel for the petitioner has sought to justify this action on behalf of the petitioner, while not pointing out the factum of filing of the above-said petition and the order dated 28.5.2015 passed by this Court, contending that since the said petition was for anticipatory bail and present one is for quashing, it is not required by the petitioner to disclose that fact before this Court. However, it is a matter of judicial record that petitioner sought anticipatory bail only for the reason that he had been declared proclaimed offender vide the impugned order (Annexure P-4). This was the reason that learned counsel for the petitioner contended before this Court, at earlier point of time, that is on 28.5.2015, that the petitioner has been illegally declared proclaimed offender.

So far as the application (Annexure P-5) moved by the petitioner before the learned trial Court for recalling of the above-said order dated 20.1.2015 is concerned, that was not even maintainable and the

learned Chief Judicial Magistrate, Mewat, has rightly passed the impugned order dated 9.7.2015 (Annexure P-7).

The fact remains that in compliance of the above-said order passed by this Court on 28.5.2015, petitioner did not surrender before the learned trial Court. It was open to the petitioner to explain all these facts before the learned trial Court but instead of doing so, he is running from the law, for the reasons best known to him.

So far as the different judgments/orders as relied upon by the learned counsel for the petitioner are concerned, there is no dispute about the observations made therein. However, on close perusal of the cited judgments/orders, none of them has been found of any help to the petitioner, being distinguishable on facts. It is so said, because in the present case the above-said order dated 28.5.2015 has already been passed by this Court, directing the petitioner to surrender before the learned trial Court but the petitioner failed to comply with the order. In such a situation, petitioner cannot be granted any benefit out of his own wrong, particularly when he has not shown any respect for the law. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noticed above, coupled with the reasons aforementioned, this Court is of the considered view that the instant 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 present petition stands dismissed, however, with no order as to costs.

27.7.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE