

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

**Crl. Misc. No.M-32190 of 2014
Date of decision : 17.07.2015**

Joga Singh

.....Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. Saurabh Bajaj, Advocate
for the petitioner.

Mr. Deepak K. Grewal, DAG, Haryana.

ANITA CHAUDHRY, J(ORAL)

This petition is for quashing the order dated 08.12.2010, passed by Chief Judicial Magistrate Karnal in FIR No.133 dated 18.02.2010, registered under Section 376, 328, 506 IPC, Police Station Civil Lines Karnal and the consequential FIR No.261 dated 12.04.2011 registered under Section 174-A IPC.

The facts are necessary for disposal of the petition. On a complaint made by the prosecutrix FIR No.133 dated 18.02.2010 was registered under Section 376, 328, 506 IPC. Allegations were made therein that Joga Singh, a neighbourer had an evil eye on her. The victim had gone to Karnal to take medicine. The accused met her on

the way and took her to Sudarshan Hospital. There he served her a cold drink and she fell unconscious and was raped. On gaining consciousness, the accused threatened her and disclosed that he had taken her pictures and would show them to her parents and husband. The prosecutrix had complained that the accused had been blackmailing her and had been raping her for the last five years. The trial against Joga Singh ended in acquittal on 03.05.2012.

The prayer made by the petitioner is that when the FIR was registered, the petitioner was living in Malaysia and was not in India but had been declared proclaimed offender vide order dated 08.12.2010 and on his return, he applied for anticipatory bail and had joined the proceedings and the trial had ended in acquittal. It was pleaded that as he had been declared proclaimed offender, FIR No.261 was registered on 12.04.2011 which was an abuse of the process of law and should be quashed.

Notice was given to the State who had filed their reply and it was pleaded that the before registration of the FIR, notices were issued to Joga Singh petitioner to join the investigation but he failed to appear and his warrants of arrest were issued and ultimately he was declared proclaimed offender. It was admitted that the petitioner had been acquitted in the first FIR, vide order dated 03.05.2012. It was pleaded that the petitioner was declared proclaimed offender in the first FIR and therefore, on that account the second FIR under Section 174-A IPC was registered.

The counsel for the petitioner refers to Annexure P-3 vide which the petitioner was declared proclaimed offender. He urges that

the petitioner had left the country in January 2010 and had returned in December, 2010 and copy of the passport is available on record. It was urged that thereafter, on return when petitioner came to know about the FIR, he had approached the Court and anticipatory bail was allowed to him and he had put in appearance and the trial ended in acquittal and the subsequent FIR registered on 12.04.2011 is an abuse of the process of Court. It was urged that the petitioner had been declared proclaimed offender on 08.12.2010 whereas the anticipatory bail was granted on 23.02.2011 and there was no material to show that service upon the petitioner had been effected and continuation of the proceedings would be an abuse of the process of law.

A perusal of copy of the passport reveals that the petitioner had left the country on 03.01.2010. The petitioner had returned in December, 2010. He was declared proclaimed offender on 08.12.2010. The petitioner was allowed anticipatory bail in February, 2011. The second FIR was registered on 12.04.2011.

It is an admitted fact that before the issuance of the summoning order, the petitioner had left India.

In ***Sunil Kumar Vs. State***, 2002(1) RCR (Crl) 119, the Delhi High Court has held that when the accused is residing in foreign country and no attempt is made to serve summons through ministry of External Affairs, the order of proclamation is liable to be set aside. In the said judgment, it was held that in addition to the ordinary mode of service; notice can also be ordered to be published in a newspaper where the person is ordinarily residing.

In the present case also it has not been shown that the notice issued to the petitioner under Section 82 of the Criminal Procedure Code had been served upon him nor it has been shown that the proclamation had been issued in accordance with the procedure of law.

In view of the above circumstances, it is held that the proceedings in FIR No.261 dated 12.04.2011, registered under Section 174-A IPC cannot proceed and would be an abuse of process of law to allow the proceedings to go on. The petition is allowed. The order dated 08.12.2010, passed by Chief Judicial Magistrate Karnal in FIR No.133 dated 18.02.2010, registered under Section 376, 328, 506 IPC and the consequential FIR No.261 dated 12.04.2011 registered under Section 174-A IPC is quashed.

17.07.2015
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(ANITA CHAUDHRY)
JUDGE