

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No. M-44049 of 2015
Date of Decision: 24.12.2015.**

Deepak Kumar Kapoor

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Rajesh Gupta, Advocate
for the petitioner.

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SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) challenging order dated 18.7.2014 (Annexure P-10) whereby petitioner was declared a proclaimed offender and quashing of FIR No. 322 dated 21.10.2015, under Section 174-A of the Indian Penal Code, 1860 ('IPC' for short), registered at Police Station Ambala City, District Ambala (Annexure P-11) and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioner has submitted that proper procedure had not been followed before declaring the petitioner a proclaimed offender. Hence, the order dated 18.7.2014 (Annexure P-10) whereby petitioner was declared a proclaimed offender was liable to be set aside. Learned counsel for the petitioner has further submitted that it was evident from the order dated 20.2.2014 (Annexure P-3) that fresh proclamation under Section 82/83 Cr.P.C. requiring petitioner to appear before the Court on 21.2.2014 was ordered to be issued.

Thus, the petitioner had not been given 30 days notice to appear

before the Trial Court. FIR registered against the petitioner under Section 174-A IPC, in consequence thereto, was also liable to be quashed.

In support of his arguments, learned counsel has placed reliance on '**Ashok Kumar versus State of Haryana and another, 2013(4) Crl. CC 609**' wherein it was held that the order declaring an accused a proclaimed offender was liable to be quashed where accused had not been given clear cut period of 30 days to appear before the Court.

Learned counsel for the petitioner has next placed reliance on '**Dilbagh Singh @ Sonu versus State of Punjab, 2015(3) Law Herald 2381**', wherein similar view was taken.

In the present case, FIR No. 343 dated 23.7.2012 under Section 406, 420 IPC was registered against the petitioner at Police Station Ambala City. A perusal of the order dated 21.12.2013 (Annexure P-2) reveals that warrant of arrest issued qua the petitioner had been received back unexecuted and proclamation was ordered to be issued under Section 82/83 Cr.P.C. requiring the petitioner to appear before the Court on 21.2.2014. On 20.2.2014, order Annexure P-3 was passed. A perusal of the same reveals that the proclamation issued qua the petitioner had not been received back and a fresh proclamation was ordered to be issued for 21.2.2014 and the executing official was directed to appear before the Court for making his statement. Notice was also issued to the surety and identifier. Annexure P-4 is the order dated 21.2.2014 passed by the Trial Court. A perusal of the same reveals that proclamation issued qua the petitioner had been received back duly effected. The

case was adjourned to 21.3.2014 for presence of the petitioner. A perusal of the order dated 21.3.2014 (Annexure P-6) reveals that G.S.Sullar, Advocate had appeared on behalf of the petitioner and had sought an adjournment to enable the petitioner to appear before the Court. The adjournment was sought on the ground that the mother of the petitioner had expired on 22.2.2014. A perusal of the order dated 28.4.2014 (Annexure P-7) reveals that the case was fixed for presence of the petitioner but an application was moved by the counsel for the petitioner for adjournment. The case was adjourned to 15.5.2014. A perusal of the order dated 2.7.2014 (Annexure P-8) reveals that the counsel for the petitioner had sought an adjournment and the case was adjourned to 18.7.2014 for the presence of the petitioner.

On 18.7.2014 (Annexure P-10), following order was passed:-

“Today case was fixed for presence of accused Deepak Kumar Kapoor. However, learned counsel for the complainant has moved an internet copy of order dated 17.07.2014 passed by the Hon'ble Punjab and Haryana High Court in Crl. Misc. No. M-13988 of 2014 vide which the quashing petition preferred by the accused Deepak Kumar Kapoor had been dismissed as withdrawn with liberty to avail the alternate remedy and take all the pleas based on the said petition therein. However, nobody has appeared on behalf of the accused Deepak Kumar Kapoor today. Perusal of case file shows that the proclamation issued against

accused Deepak Kumar Kapoor had been received back duly effected on 21.02.2014 and the period of 30 days has already been lapsed since the publication of proclamation.

In view of the above, the accused Deepak Kumar Kapoor is, hereby, declared proclaimed person. File be consigned to record-room.”

Thus, in the present case, petitioner was aware of the pendency of the criminal proceedings against him. Counsel for the petitioner had been appearing before the Trial Court and had been seeking adjournments to enable the petitioner to surrender before the Trial Court. However, petitioner failed to surrender before the Trial Court. Consequently, the Trial Court, left with no other alternative, rightly declared the petitioner a proclaimed offender as he had failed to appear despite having the knowledge of the fact that criminal proceedings were pending against him. The judgments relied upon by the learned counsel for the petitioner fail to advance the case of the petitioner as they are based on different facts.

Since the petitioner had been rightly declared a proclaimed offender, no ground for quashing of FIR No. 322 dated 21.10.2015, under Section 174-A IPC, registered at Police Station Ambala City, District Ambala (Annexure P-11) against the petitioner, is made out.

Dismissed.

**(SABINA)
JUDGE**

December 24, 2015
Gurpreet