

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM No. 28548 of 2013 (O&M)

Date of decision : 04-10-2015

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Manoj Pal

.....Petitioner

Versus

U.T.,Chandigarh

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Jitender Dhanda, Advocate for the petitioner.

Mr. A.S Virk, Advocate for U.T., Chandigarh.

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RITU BAHRI, J.

The petitioner is seeking quashing of the order dated 1.7.2013 (Annexure P-3) whereby directions have been issued for registration of an FIR against the petitioner under Section 229-A IPC. The petitioner was facing a trial in FIR No. 18 dated 12.2.2003 registered under Sections 364, 392, 342, 328, 506, 120-B and 376 IPC at Police Station Sector 19, Panchkula.

As per prosecution case, petitioner along with his co-accused had abducted prosecutrix Seema on 8.2.2003 and released on 12.2.2003. During this period she was intoxicated by some drugs and was raped.

The petitioner was released on regular bail by the Court of

Additional Sessions Judge, Panchkula vide order dated 14.5.2003 (Annexure P-1). The proceedings have been stayed in Criminal Misc. No. M-26377 of 2004 filed by the petitioner and in Criminal Misc. No. M-27911 of 2005 filed by his co-accused Mohinder Kumar Jain. Criminal Misc. No. M-26377 of 2004 was disposed vide order of this Court dated 4.5.2010 (Annexure P-2). It was on account of his non-appearance on 1.7.2013 that his bail bonds were forfeited and warrants of arrest were issued. Besides that the trial Court also directed for registration of FIR against the petitioner under Section 229-A of Indian Penal Code vide order (Annexure P-3) and thereafter the FIR No. 212 dated 8/7/2013 (Annexure P-4) was registered.

Counsel for the petitioner has informed the Court that in the trial, the petitioner has since been acquitted and the continuation of the proceedings under Section 229-A IPC on account of non-appearance on one date of hearing is liable to be quashed. Reference at this stage can be made to a judgment passed by the **Rajasthan High Court** in ***Pradeep Goswami vs. State of Rajasthan 2010(1) CrL L.R. 141***, wherein, on account of non-appearance of the accused, FIR was lodged under Section 229-A IPC. Petition was filed seeking quashing of FIR. It was held that the petitioner was released on bail on furnishing surety bond so provisions of Section 229-A are not applicable. Offence under Section 229-A can only be applicable if accused is released on bail or on bond without surety and remained absent without sufficient cause. In this judgment in paragraph 5, it has been observed as under:

*5. Section 229-A Indian Penal Code provides for
prosecution of accused who being on bail without sufficient*

cause fails to appear in the Court. According to Section 229-A “whoever, having been charged with an offence and released on bail or on bond without sureties, fails without sufficient cause (the burden of proving which shall lie upon him) to appear in Court in accordance with the terms of the bail or bond, shall be punished with imprisonment. Out of the essential element for Constitution of the offence under Section 229-A is that release must be on bail or on bond without sureties. Among the words “on bail or on without sureties” are “without sureties”. So, it appears that if the person is released without sureties and then he absents without sufficient cause, then only the Section 229-A is applicable. In this particular case, the accused-petitioner does not appear to have been released without sureties. Further petitioner absented on 4.6.2007 and FIR is dated 5.6.2007 the next day of absence. Words “without sufficient cause though burden on him” cannot be altogether ignored. So, in the totality of facts, provisions of Section 229-A is not applicable here and the FIR is to be quashed. Here in this case, from the FIR, it does not appear that petitioner was released on bond with sureties as petitioner is not released “with surety”, the provision of Section 229-A Indian Penal Code can hardly be applicable and the FIR is to be quashed solely on this ground. Accordingly, the FIR No. 446/20007 registered with the Police Station Hanurnangarh Junction for the offence under Section 229-A Indian Penal Code is hereby quashed.”

Similarly in the case of *Uddhavrao Nivrutti Sarkale and Others vs. State of Maharashtra 2012 (7) RCR (Criminal) 155*, the accused was on bail and in a period of 6-7 years, could not appear on six occasions. It was held that the accused did not take any undue advantage of relief of bail granted in his favour. Trial cannot be said to be delayed due to the absence of the accused. Order directing to frame charge against the accused under Section 229-A was set aside. The relevant portion of the judgment is extracted hereunder:

“ It appears that the learned Lower Court was impressed with the submissions of learned APP that the delay caused to dispose of the trial is because of the delaying tactics played by the applicant accused. At the same time, the learned Lower Court also require to consider whether at any point of time during this period, except the order dated 15/07/2009, whether the bail bond of the accused was cancelled due to his absence before the Court. In absence of it, the order assailed is not supported with the cogent reasons recorded by the learned J.M.F.C. In the result, the order to frame charge against the applicant u/s. 229(A) of The [IPC](#) do not sustain. In the substance, the order passed below Exh.103 dated 07/07/2010 is require to be quashed and set aside. The order impugned to frame the charge against applicant u/s. 229(A) is not sustainable in law. Accordingly it is quashed and set aside.”

In the present case, the petitioner was absent only on one date

on account of medical illness and, thereafter, his bail bonds were forfeited. The essential ingredients to initiate proceedings under Section 229-A are missing in the present case. Moreover during the pendency of these proceedings, the trial has been concluded and the petitioner has been acquitted. The petitioner has faced the trial for almost three years. His case is covered under the above mentioned judgments.

In view of all that has been discussed above, the present petition is allowed and the impugned order dated 1.7.2013 (Annexure P-3) is hereby quashed.

04-10-2016

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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No