

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

CRR No.1575 of 2014

Date of Decision: April 17, 2017

Naveen Kumar @ Bittu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Munfaid Khan, Advocate
for the petitioner.

Mr. Deepak Sabherwal, Addl. A.G. Haryana.

FATEH DEEP SINGH, J.

This revision petition by the convict petitioner-Naveen Kumar @ Bittu by virtue of provisions of Section 401 IPC is directed against the judgment dated 11.04.2014 of the Court of learned Additional Sessions Judge, Sonapat. It is worthwhile to refer here that the Court of learned Additional Chief Judicial Magistrate, Sonapat had earlier through judgment dated 16.3.2012 convicted the petitioner with imprisonment which he has already undergone. Upon impugning the same the learned Appellate Court upheld these findings and dismissed his appeal and that is how the same is before this Court.

Upon hearing learned counsel for the petitioner and perusing the records of the case. The brief history of the case is that the petitioner was initially facing accusation in case bearing FIR No.428 dated 02.09.2009 under Section 302 read with Sections 120-B and 34 IPC and

Section 25 of Arms Act pertaining to Police Station, Civil Line, Sonapat. During the course of proceedings the petitioner is alleged to have absented and vide orders dated 22.05.2010 he was declared as proclaimed offender by the learned Additional Chief Judicial Magistrate, Sonapat. In consequence thereupon, the present case was registered under Section 174-A IPC. During the trial of this case the prosecution examined three witnesses, PW1 EASI Rajpal, PW2 Parveen Kumar, Criminal Ahlmad, and PW3 SI Om Parkash. Upon closer of the evidence of the prosecution the entire incriminating evidence put to accused in his statement under Section 313 Cr.P.C who denied the same taking the plea of false implication but did not lead any evidence in defence.

Appreciating the submissions of the two sides, Section 174-A IPC was enacted with definite purpose through Act No. 25 of 2005 with effect from 23.6.2006. The very purpose and object of the same was to ensure undue absenteeism from Court proceedings by the accused or anyone else as required by the proclamation published by the Court of law. The offence is cognizable, triable by Magistrate and is non-compoundable. The contentions of the learned counsel for the petitioner that there is no semblance of evidence to bring about any evidence against the petitioner is well thwarted by the learned State counsel. Appreciating the submissions that the accused-present petitioner was facing charges in the murder case along with his co-accused and it was subsequent thereto he had absented and which fact could not be controverted by learned counsel for the petitioner. Through PW1 EASI, Rajpal the prosecution has proved registration of earlier FIR for murder against the petitioner in which he was

declared proclaimed offender vide orders dated 24.4.2010 and which has been proved as Ex.PW3/A. It is the own stand of the counsel for the petitioner that the said order declaring the petitioner as proclaimed offender was not put to challenge and subsists on the date when the cognizance of the offence was taken by the learned Magistrate in this case. Since the petitioner has been declared as proclaimed offender certainly his case is covered prima facie under the provisions of Section 174-A IPC and through PW2 Parveen Kumar, Criminal Ahlmad the fact that the petitioner was declared proclaimed offender on 24.4.2010 is established documentarily and there is no cross-examination to both these witnesses so examined by the prosecution. It is through PW3 SI Om Parkash the prosecution has proved the fact of this order of proclamation and upon issuance of warrant of proclamation Ex. PW2/A he failed to appear and ruqa Ex.PW3/B was sent to Police Station leading to registration of FIR Ex.PW3/C. Though, the accused had been put to entire evidence but nothing has come in his stand taken under Section 313 Cr.P.C and, thus, apparently there is not much resistance shown by the petitioner to the stand of the prosecution orally as well as documentarily proved by evidence on records.

The Court below has rightly held that despite issuance of proclamation process in terms of Section 82 Cr.P.C the petitioner has failed to appear leading to registration of FIR and learned counsel for the petitioner could not pinpoint what illegality or perversity has come about necessitating intervention by this Court. The entire proceeding are subject matter of judicial Court and have been well placed on the records and proved by all means. The powers of the Court in revision are limited and

very much restricted to check the very illegality and perversity of order or findings. Learned counsel for the petitioner could not pinpoint any such apparent fault in the findings of the learned Additional Chief Judicial Magistrate or in the findings of the learned Appellate Court. Rather the two Courts below in their concurrent findings have taken a lenient approach into the matter and keeping in view the facts and circumstances of the case has denied the petitioner right of probation which was not even impugned before this Court by the learned counsel for the petitioner and rather has sought to challenge the very findings on merits in the impugned judgment of the learned first Appellate Court and legally sufficient reasons have come forth which are well elicited in the impugned findings and rather in the light of compassion has sentenced him to imprisonment which he has already undergone.

Thus, in the totality of what has been detailed and discussed above no cause for showing indulgence in the impugned findings by this Court is made out by any means. The revision petition being hopelessly without any merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

April 17, 2017
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No