

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.122

CRM-M-20339-2017

Date of decision : 18.07.2018

Talib

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Afzal Hussain, Advocate, for the petitioner.

SUDHIR MITTAL, J. (Oral)

The petitioner seeks quashing of order dated 09.12.2016 (Annexure P19), whereby he was declared as proclaimed offender as well as order dated 27.12.2016 (Annexure P20), whereby the revision against the order (Annexure P19), has been rejected.

A perusal of the order (Annexure P19) shows that the petitioner was not appearing before the trial Court and therefore, investigating agency moved an application for issuance of non-bailable warrants. Despite execution of the same, the petitioner failed to appear and therefore, a proclamation under Section 82 Code of Criminal Procedure, 1973 (for short the 'Code') was issued. The said proclamation was also served upon the petitioner, but he failed to appear before the trial Court. The trial Court observed that due to absence of the accused persons, the trial has not commenced. Thereupon, the petitioner was declared as proclaimed offender. The learned Sessions Judge, Mewat, rejected the revision filed against the said order on the ground that no illegality or irregularity had been pointed out therein.

Learned counsel for the petitioner submits that the Supreme Court had issued notice on the anticipatory bail application filed by the

petitioner vide order dated 05.12.2016. Thus, the petitioner was seeking his legal remedies and could not be said to have absconded from the law so as to declare him as proclaimed offender. Reliance has been placed upon a judgment of the Delhi High Court in '**D.N. Sood and Ors. Vs. I.T.O, 105 (2003), Delhi Law Times, 585**', wherein the order under Section 82 of the Code was quashed on the ground that the petitioner was not to blame for non-appearance as his counsel did not inform him properly.

It is not disputed that the petitioner was aware of the fact that proceedings are continuing before the trial Court. It is also not denied that non-bailable warrants were also issued against him followed by the proclamation under Section 82 of the Code and the same were served upon him. This is also apparent from the fact that his counsel was appearing before the trial Court on every date and under the circumstances the trial Court had no option, but to declare the petitioner as proclaimed offender. If the counsel chose to advise the petitioner not to appear then the petitioner has to suffer the consequences of the advice of his counsel. The judgment of **D.N. Sood's case** (supra), is not applicable because in that case the accused had been granted exemption from personal appearance on earlier dates and on the relevant date, his counsel did not inform him that there was no exemption for personal appearance.

The petition has no merit and is accordingly dismissed.

(SUDHIR MITTAL)
JUDGE

18.07.2018

Ramandeep Singh

Whether speaking / reasoned

Whether Reportable

Yes / No

Yes/ No