

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

CRM-M-45803-2017

Date of decision: 27.03.2018

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... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sudhir Makkar, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of the impugned order dated 25.01.2016 (Annexure P-9) passed by the trial Court, whereby the petitioner was declared as proclaimed person in a criminal complaint filed by respondent No.2 under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act') as well as for quashing of FIR No.328 dated 14.09.2016 under Section 174-A of the Indian Penal Code (for short 'IPC') (Annexure P-10), which has been registered on the directions given in the impugned order dated 25.01.2016 (Annexure P-9).

Brief facts of the case are that respondent No.2 has filed a criminal complaint under Section 138 of N.I. Act before the trial Court, in which the petitioner was summoned vide order dated 09.07.2014 to face the trial.

Learned counsel for the petitioner submits that since the petitioner was not served through the summons, bailable warrants were issued against him on 27.10.2014 and thereafter, on receiving the report of Bailiff that the petitioner is no more residing at the given address in the complaint, the complainant thereafter moved an application for giving another address of the petitioner. Thereafter, the non-bailable warrants were issued and in the meantime, since the petitioner was under bonafide impression that he was making payment to the complainant, he did not appear before the trial Court and the trial Court passed an order on 10.11.2015 to the effect that since non-bailable warrants issued against the accused-petitioner are received back unserved, fresh non-bailable warrants be issued. Again Process Server reported that the warrants of arrest could not be executed, as the petitioner was not residing on that address.

Learned counsel for the petitioner further submits that the summons were sent on wrong address despite the fact that correct address was given by the complainant and thereafter, the proceedings were initiated against the petitioner under Section 82 Cr.P.C. and even the proclamation was made on the same incorrect address and thus, it is submitted that the entire process was undertaken by the trial Court, on an address where the petitioner was not residing, in spite of the fact that the complainant has already given the correct address of the petitioner. It is further submitted that after passing of the impugned order dated 25.01.2016 by the trial Court, declaring the petitioner as a proclaimed person and in pursuance of a direction to the police to register an FIR under Section 174-A IPC, the impugned FIR was registered against the petitioner.

Learned counsel for the petitioner has further submitted that in the meantime, the petitioner has paid the entire amount to the complainant and the complainant filed an application dated 16.11.2016 before the trial Court for compounding the matter in terms of Section 147 of N.I. Act and also to set aside the order dated 25.01.2016. The trial Court, vide order dated 16.11.2016 (Annexure P-11), after recording the statement of the complainant that he wants to withdraw the complaint, on receiving the full and final payment from the petitioner, amounting to Rs.15 lacs, permitted the complainant to withdraw the complaint, however, no order was passed with regard to the request made by the complainant for setting aside the order dated 25.01.2016, vide which the petitioner was declared a proclaimed person.

It is further submitted on behalf of the petitioner that the impugned order dated 25.01.2016 has been passed without following the proper procedure, inspite of the fact that correct address was supplied by the complainant, non-bailable warrants were issued against the petitioner on the incorrect/old address and even a report of the Process Server was received by the trial Court that the petitioner no more resides at that address and the proclamation under Section 82 Cr.P.C. was also made at the same/old address and therefore, the petitioner never came to know about the proceedings under Section 82 Cr.P.C. Counsel for the petitioner has further submitted that since the complaint under Section 138 of N.I. Act has already been withdrawn, as per compromise between the parties, no purpose will be served in prosecuting the petitioner in pursuance to the impugned FIR registered under Section 174-A IPC.

Reply by way of affidavit of Assistant Commissioner of Police,

Sadar Gurugram has already been filed and the factual position is not disputed by learned State counsel. It is also not disputed that the complaint has already been withdrawn by respondent No.2, however, it is submitted that in pursuance to the impugned order dated 25.01.2016, FIR No.328 was registered against the petitioner and on completion of the investigation, challan has already been presented.

After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons: -

- (a) At the very first instance, when the summons were issued, a report was made by the Process Server that the petitioner is no more residing at the address given in the complaint. Thereafter, though the complainant has given correct/present address of the petitioner, yet the non-bailable warrants were sent to the said/old address and even proclamation under Section 82 Cr.P.C. was not made on the correct address.
- (b) The complaint under Section 138 Cr.P.C., in which the aforesaid impugned order has been passed, stands withdrawn in pursuance to the compromise arrived at between the parties, as the petitioner has paid the entire amount.
- (c) In the application dated 16.11.2016, the complainant himself made a prayer that he may be permitted to withdraw the complaint and the impugned order dated 25.01.2016, declaring the petitioner as a proclaimed person, be set aside, however, the trial Court, vide order dated 16.11.2016 (Annexure P-11), has only permitted the complainant to withdraw the complaint and no order was passed with regard to request of the complainant that the order dated 25.01.2016 be set aside.

(d) It is not disputed by the learned State counsel that FIR has been registered, only in pursuance of the impugned order dated 25.01.2016.

In view of the above, present petition is allowed and the order dated 25.01.2016 (Annexure P-9), declaring the petitioner as proclaimed person, is set aside. Since the order dated 25.01.2016 passed by the trial Court is set aside, the consequential directions given by the trial Court to register an FIR against the petitioner as well as FIR No.328 dated 14.09.2016 under Section 174-A IPC and all consequential proceedings are also quashed.

[ARVIND SINGH SANGWAN]
JUDGE

27.03.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No