

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 21.09.2018

1. CRR-176-2015 (O&M)

Kuldip Singh

...Petitioner

Versus

State of Haryana

...Respondent

2. CRM-M-43002-2014 (O&M)

Kuldip Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. A.D.S. Sukhija, Advocate
for the petitioner (in both cases).

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Vide this common order, I dispose of CRR-176-2015 and CRM-M-43002-2014.

The facts are taken from CRR-176-2015. Petitioner Kuldip Singh was involved in an FIR No.79 dated 10.06.2006 under Sections 302, 201 of the Indian Penal Code (for short 'IPC'), registered at Police Station

Chandimandir, District Panchkula. This FIR was initially registered against unknown persons, on the statement of one Ravinder Kumar, a passerby. One Ramanpreet Kaur had died and the petitioner was not named in the FIR but later on involved in the said case, on the statement of one Amarjit Kaur, who on 20.06.2006 stated that the engagement of her daughter, deceased Ramanpreet Kaur was solemnized with petitioner Kuldip Singh on 26.10.2005 and the marriage was due on 18.11.2005, whereas on 09.11.2005, her daughter was kidnapped by one Paramjit Singh Kainth. Thereafter, petitioner got married to Paramjit Kaur and left for Manila. It is further stated that in 2006, petitioner returned back to India and started contacting her daughter, who was staying in a PG accommodation in Sector-22, Chandigarh. On 10.06.2006, petitioner had given a call to deceased Ramanpreet Kaur to meet him and she along with Amarjit Kaur came in the parking in Sector-22, Chandigarh, opposite Bus Stand Sector-17, Chandigarh and from there, Amarjit Kaur left for Barnala in a bus and deceased Ramanpreet Kaur was in the company of the petitioner. On the basis of last scene evidence, the petitioner was named as an accused in the FIR. Thereafter, the petitioner, during the trial of said case, was declared a proclaimed offender vide order dated 28.10.2013 (Annexure P-1) as in the intervening period, he had gone to Manila and later on, the petitioner surrendered on 06.03.2014. On account of being declared a proclaimed offender, the petitioner was also involved in FIR No.70 dated 10.03.2014 under Section 174-A IPC, Police Station Chandimandir, got registered by ASI Gulab Singh.

Learned counsel for the petitioner submits that the petitioner, thereafter, faced the trial in the aforesaid FIR No.79 and was acquitted by the Court. However, in the subsequent FIR registered under Section 174-A IPC, the petitioner, again faced the full length trial and was convicted by the Additional Chief Judicial Magistrate vide order dated 04.07.2014, holding him guilty of offence punishable under Section 174-A IPC and was ordered to undergo simple imprisonment for a period of three months with a fine of Rs.1,000/- and in default of payment of fine, to further undergo simple imprisonment for one month. Thereafter, the petitioner preferred an appeal before the lower appellate Court and the same was dismissed vide impugned judgment dated 13.10.2014.

The present CRR-176-2015 is filed challenging the aforesaid judgments passed by the Courts below.

II. CRM-M-43002-2014 has been filed praying for quashing of the order dated 28.10.2013 passed by the Judicial Magistrate 1st Class, Panchkula, vide which the petitioner was declared a proclaimed offender during pendency of aforesaid FIR No.79 dated 10.06.2006 under Sections 302, 201 IPC, Police Station Chandimandir, District Panchkula.

Learned counsel for the petitioner in CRM-M-43002-2014 has submitted that the petitioner was not aware about registration of FIR No.79 and therefore, the proceedings initiated under Section 82/83 Cr.P.C. declaring him a proclaimed offender, were not in accordance with law, as the petitioner was not served with the proclamation and even no service was effected at his ordinary place of residence and two days after registration of

FIR No.79, petitioner left India on 12.06.2006 for Manila, in Philippines and stayed there for a considerable time. Learned counsel thus prayed that the order dated 28.10.2013, which forms the basis for registration of FIR No.70 under Section 174-A IPC, be set aside.

Learned counsel for the petitioner has further argued that conviction of the petitioner is not sustainable in view of the fact that the impugned order dated 28.10.2013, declaring him a proclaimed offender, was passed in an illegal manner, therefore, prosecution of the petitioner under Section 174-A IPC, on the basis of aforesaid order, is illegal. It is further argued that even from the evidence led on record, the prosecution has failed to produce cogent evidence that the petitioner was declared a proclaimed offender in accordance with law and he can be prosecuted for the same.

Both the petitions are pending since 2014/2015 and the lower Courts record has been requisitioned.

It is worth noticing that as per the custody certificate, the petitioner has already undergone the entire sentence of three months and he stands acquitted in FIR No.79 by the Court of Additional Sessions Judge, Panchkula vide judgment dated 07.04.2015.

In reply, learned State counsel has submitted that the petitioner was declared a proclaimed offender, after following the due procedure and issuance of proclamation under Section 82 Cr.P.C. and therefore, the trial Court has rightly convicted the petitioner.

For a reference, the findings recorded by the trial Court read as under: -

“After going through the case file and hearing the learned PP for the State and the learned defence counsel, this Court has reached to the conclusion that the prosecution has duly proved its case against the accused for commission of the offence punishable under Section 174-A of Indian Penal Code.

As per the prosecution version, the accused facing trial had been declared a proclaimed offender in case FIR No.79 dated 10.6.2006, under Sections 302, 201 of IPC, Police Station Chandimandir by the Court Sh.Amit Verma, the then learned Judicial Magistrate, Ist Class, Panchkula, as he failed to appear before the court on 28.10.2013, on which date, he was supposed to appear in pursuance of the proclamation issued and effected against him.

It is urged by learned defence counsel that the proclamation against the accused had never been effected in case FIR No.79 dated 10.6.2006, under Sections 302, 201 of IPC, Police Station Chandimandir at the place of his residence, for as per the order Ex.PW2/A, the address of the accused is different from his address as mentioned in his passport Ex.D1. It is urged that prosecution did not file the copy of FIR No.79 dated 10.6.2006, under Sections 302, 201 of IPC, Police Station Chandimandir, nor the final report submitted by the Investigating Agency/Prosecution in the said case has been proved on the file by the prosecution in this case. It is urged

that the aforesaid order (Ex.PW2/A) was obtained by the prosecution/Investigating Agency by concealing correct address of the accused. As such, it is urged that the aforesaid order is illegal and is not binding and a prayer for the acquittal of the accused is made.

However, the aforesaid contention of learned defence counsel is not tenable, for had the aforesaid order dated 28.10.2013 been wrongly passed by the court concerned, the remedy available to the accused was to assail the aforesaid order before the learned Appellate Court and this court cannot sit as an Appellate Court over the court concerned to decide the legality of the aforesaid order dated 28.10.2013, vide which the present accused was declared a proclaimed offender by the court concerned in the aforesaid FIR. The prosecution was not required to prove the copy of the FIR or the final report submitted under Section 173 Cr.P.C in case FIR No.79 dated 10.6.2006, under Sections 302, 201 of IPC, Police Station Chandimandir in the present case which was registered against the accused on the basis of the order Ex.PW2/A, vide which he was declared a proclaimed offender and if the aforesaid order had been passed in contravention of the provisions of law, none had restrained the accused from assailing the aforesaid order before the appropriate Court.

However, it is conceded at bar by learned defence

counsel that till date, the aforesaid order has not been assailed by the accused before any Court of law. As such the order dated 28.10.2013 passed in case FIR No.79 dated 10.6.2006, under Sections 302, 201 of IPC, Police Station Chandimandir Ex.PW2/A is in existence as on day also.

From the aforesaid discussion, it is established on the file that the present accused was legally bound to attend the court of Sh.Amit Verma, the then learned Judicial Magistrate, Ist Class, Panchkula in case FIR No.79 dated 10.6.2006, under Sections 302, 201 of IPC, Police Station Chandimandir on 28.10.2013 (when he was declared a proclaimed offender), but still he failed to abide by the aforesaid directions of the court given in the proclamation in question.

On the basis of the aforesaid discussion, this court is of the view that prosecution has duly proved its case against the accused for the commission of offence punishable under Section 174-A of Indian Penal Code and he is held guilty and convicted thereunder. Let the convict be heard on quantum of sentence after some time.”

After hearing learned counsel for the parties, I find no merit in both these petitions.

- (a) Taking up the arguments raised in CRM-M-43002-2014 that the petitioner was wrongly declared a proclaimed offender, counsel for the petitioner has failed to make out a case that the

proclamation made under Section 82 (4) Cr.P.C. was not in accordance with law. The reply by way of affidavit of ACP, Traffic, Panchkula details the investigation carried out in FIR No.79 registered under Sections 302, 201 IPC, in which the petitioner was nominated as an accused on the statement of mother of deceased Ramanpreet Kaur and therefore, nothing is on record to hold that the petitioner was not aware about registration of FIR No.79, rather the fact that Ramanpreet Kaur died on 10.06.2006, when the FIR was registered and immediately two days after i.e. 12.06.2006, the petitioner left India, which shows that he escaped from the process of law. Even this CRM-M-43002-2014 has been filed challenging the aforesaid order, after the petitioner stands convicted in FIR No.70 under Section 174-A IPC, without giving any explanation in this regard and therefore, finding no merit, this petition is dismissed.

- (b) So far as the arguments raised by learned counsel for the petitioner in CRR-176-2015 that the findings recorded by the Courts below holding the petitioner guilty of offence punishable under Section 174-A IPC are not sustainable, I find no ground to differ with the findings recorded by the Courts below.
- (c) A perusal of the LCR shows that it has come on record from the order Ex.PW2/A that as per the provisions and procedure provided under Section 82(4) Cr.P.C. and after issuance of

proclamation, the petitioner was declared a proclaimed offender, as he failed to appear before the trial Court.

- (d) As noticed above, the petitioner has failed to show that he was not aware about pendency of FIR No.79 from 2006 till 2014, when he surrendered before the trial Court. It is proved from the statements of PW1 ASI Gulab Singh, the Investigating Officer and PW3 Jasbir Singh, EASI, who re-arrested the petitioner that there is sufficient evidence on record to prove the offence under Section 174-A IPC against the petitioner. Needless to say that the petitioner has already undergone the entire sentence.

In view of the above, both these petitions i.e. CRR-176-2015 and CRM-M-43002-2014 are dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

21.09.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No