

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

CRM-M-9101 of 2017.

Decided on:- November 29, 2018.

Sanmeet Singh.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Parvinder Singh Ahluwalia, Advocate
for the petitioner.

Mr. Jagmohan Ghumman, D.A.G., Punjab.

HARI PAL VERMA, J. (Oral)

The petitioner has filed present petition under Section 482 Cr.P.C. for quashing of FIR No.197 dated 24.11.2015 under Section 174-A IPC (Annexure P-1) registered at Police Station Fatehgarh Sahib along with all subsequent proceedings arising therefrom.

Prayer has also been made for setting aside the order dated 16.08.2016 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Fatehgarh Sahib, whereby the petitioner has been charge sheeted under Section 174-A I.P.C.

Learned counsel for the petitioner has contended that on 05.11.2014 the complainant-HDFC Bank Limited had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act)

against the petitioner-accused. In the said complaint, the petitioner was never served and ultimately, he was declared as a proclaimed person on 12.10.2015, which resulted in registration of the FIR (Annexure P-1).

He has further contended that thereafter, the matter was compromised between the parties and the complainant-bank had received a sum of Rs.37,000/- from the petitioner. Since the matter had been settled, the complaint under Section 138 of the Act was dismissed as withdrawn and the petitioner-accused was acquitted in terms of provisions of Section 257 Cr.P.C. vide order dated 09.01.2017 (Annexure P-4) passed by learned Judicial Magistrate 1st Class, Fatehgarh Sahib.

He has further contended that apart from the fact that the accused has been acquitted in the complaint under Section 138 of the Act, he was never served personally in the case. He, therefore, prays for quashing of the FIR (Annexure P-1) and the subsequent proceedings arising therefrom.

The factum of compromise between the parties and the resultant acquittal of the petitioner-accused in complaint under Section 138 of the Act has not been denied by learned State counsel.

I have heard learned counsel for the parties.

Perusal of the order dated 13.05.2015 passed by learned trial Court in the complaint under Section 138 of the Act shows that the summons issued to the petitioner-accused received back with the report that he was not available at the given address. Therefore, he was ordered to be summoned through bailable warrants in the sum of Rs.5,000/- with one surety in the like amount for 27.05.2015. Thereafter, vide order dated 15.07.2015 learned trial

Court again issued bailable warrants against the petitioner-accused for 29.07.2015 on the same address as an affidavit was filed on behalf of the complainant-bank that the last known/correct address of the accused is that address which is mentioned in the complaint and there is no other address available with the bank.

The subsequent order dated 29.07.2015 passed by learned trial Court reveals that the bailable warrants issued against the accused again received back unexecuted with the report that he did not met at the address given. Thus, learned trial had issued non-bailable warrant against the petitioner-accused for 18.08.2015. The order dated 29.07.2015 passed by learned trial Court reads as under:

“Bailable warrants issued to the accused again received back unexecuted with the report that he did not met at the address given. This Court has sufficient grounds to believe that accused cannot be served through bailable warrants. He is intentionally evading and avoiding his arrest. Let coercive methods are required to be adopted to procure his presence. Let he be served through non-bailable warrant for 18.08.2015.”

Perusal of the order dated 18.08.2015 passed by learned trial Court shows that even the non-bailable warrants issued against the petitioner-accused received back with the report that he was not available at the given address and ultimately, the proclamation under Section 82 Cr.PC was issued against the petitioner-accused which resulted in registration of the FIR under Section 174-A IPC (Annexure P-1).

In view of the above, this Court finds that the petitioner was declared as a proclaimed person without having been served in the case. Thus, the process of declaring him as a proclaimed person is not sustainable. Furthermore, the complaint under Section 138 of the Act has already been dismissed as withdrawn and the petitioner has been acquitted in the complaint by learned trial Court vide order dated 09.01.2017.

Accordingly, the order dated 12.10.2015 passed by learned trial Court, whereby the petitioner was declared as a proclaimed person is set aside and the FIR No.197 dated 24.11.2015 under Section 174-A IPC (Annexure P-1) registered at Police Station Fatehgarh Sahib as well as all subsequent proceedings arising therefrom are quashed qua the petitioner as he was never served in the case as per law.

The petition is, accordingly, allowed in these terms.

November 29, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No