

In the High Court of Punjab and Haryana at Chandigarh

CRM M-8177 of 2018 (O&M)
Date of Decision: July 05, 2018

Harpal Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Jasraj Singh, Advocate,
for the petitioner.

Mr. Nikhil K. Chopra, Addl. A.G., Punjab.

P.B. Bajanthri, J. (Oral)

1. In the instant petition, petitioner has sought for quashing order dated 04.03.2017 (Annexure P/5) passed by the Chief Judicial Magistrate, Hoshiarpur by which petitioner was declared a proclaimed offender in case FIR No.72 dated 28.06.2015, registered at Police Station City, District Hoshiarpur for offences punishable under Sections 420, 471, 177, 193, 196, 198, 199 and 200 of the Indian Penal Code and consequential registration of FIR No. 108 dated 20.09.2017, registered at Police Station City, District Hoshiarpur, under Section 174-A of Indian Penal Code as well as consequential order dated 20.11.2017 vide Annexure P/9.

2. Learned counsel for the petitioner submitted that ordering proclaimed person is not in accordance with procedure. It was further submitted that proclamation procedure was published on 28.01.2017, whereas petitioner was asked to appear on 22.02.2017. Thus, clear 30 days

has not been notified with reference to the date of publication of proclamation (28.01.2017). It was further contended that statement of HC Surinder Singh No. 920, PS City, Hoshiarpur is relating to communication of publication at various places. When the police as well as Court were aware of the fact that petitioner is in abroad from the month of December, 2014, question of taking up the aforesaid procedure like pasting the proclamation order at the residence of petitioner and other places in the State of Punjab and acting on such statement for the purpose of declaring the petitioner as a proclaimed person would be contrary to the factual aspect. In the other words, both police and court had the knowledge of whereabouts of the petitioner to the extent that he was in abroad. In view of these facts and circumstances, declaring the petitioner as a proclaimed offender vide order dated 04.03.2017 and consequential orders are liable to be set aside.

3. Per contra, learned State counsel while resisting the claim of the petitioner, submitted that before filing FIR, an inquiry was conducted wherein petitioner was participated in the year 2014. There was a dispute relating to jurisdiction of the police whether it is in Hoshiarpur or in Nawanshaher. FIR was registered on 28.06.2015 by that time petitioner had gone abroad. Therefore, there is no infirmity in the order dated 04.03.2017 declaring the petitioner as a proclaimed offender and consequential orders.

4. Heard learned counsel for the parties.

5. Perusal of the record, it is evident that as on 28.06.2015, the date on which FIR was registered, petitioner was in abroad. This factual aspect was known to the police as well as Court when non-bailable warrants were issued to that extent a report was submitted by the police in the Court.

In this background, proceedings by the Court to declaring the petitioner as a proclaimed offender, again with reference to publication of proclamation procedure on 28.01.2017 and thereafter obtaining statement of the police to the extent how publication was notified, the Court proceeded to declaring the petitioner as proclaimed offender. In other words, petitioner has not been given opportunity to the extent of receipt of notices from the Court like publication of proclamation procedure dated 28.01.2017. In fact, State should have taken appropriate measure to serve the proclamation publication dated 28.01.2017. On the other hand, they have notified in the places where petitioner was not available despite that respondent-State were aware of the fact that petitioner was in abroad.

6. In view of these facts and circumstances, order dated 04.03.2017 (Annexure P/5) declaring the petitioner as a proclaimed offender is set aside. Consequential FIR No. 108 dated 20.09.2017 under Section 174-A of the Indian Penal Code, registered at Police Station City, District Hoshiarpur and order dated 20.11.2017 (Annexure P/9) is also set aside.

7. Present petition stands allowed subject to petitioner joining the investigation in case FIR No. 72 dated 28.06.2015 within a period of eight weeks from today.

July 05, 2018
vkd

[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : No