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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-11537-2017

Date of Decision : February 13, 2019

Dr. Rajinder Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Priyanshu Kamra, Advocate,
for the petitioner.

Mr. Ashok Kumar Singla, Sr. DAG, Punjab,
for respondent-State .

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure (Cr.P.C.) is for quashing FIR No. 0027 dated 20.2.2017 (Annexure P/3) under Section 174-A IPC registered at Police Station City-I, Abohar.

2. Facts relevant for the purpose of decision of the present petition; petitioner herein was retired from Government service on 30.1.2013 as a Deputy Medical officer. He was a prosecution witness in Complaint Case No.173-I/18.8.10/21.09.13, titled as **Sarwan Singh Vs. Jagmandeep Singh etc.** under Sections 323, 504, 506 and 34 IPC, Police Station Sadar, Abohar. The petitioner was summoned as a prosecution witness in the said case as MLR No. 26 dated 10.05.2010 regarding

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Swaran Singh was on the file. For that purpose, learned Judicial Magistrate issued summons to the petitioner on 06.03.2013 and the same were received back with the report that the petitioner stood transferred to DMC, Taran Tarn. Thereafter summons were issued and the same were never served upon the petitioner and there was one reports that the petitioner refused to receive the summons and thereafter proclamation under Section 82 Cr.P.C. was issued against the petitioner. Even the proclamation was effected at a vacant plot only as is evident from the report of serving Constable, who had affixed the proclamation and on that basis, learned Magistrate passed the order for registration of the aforesaid FIR, Annexure P/3.

3. Learned counsel for the petitioner contended that the petitioner was just a prosecution witness in this case as he was serving as a Medical Officer with the State Government. He had no such intention not to appear in the Court and he had no intimation at all to appear as a witness before the said Court. The repeated reports were received before learned trial Magistrate that summons could not be served as the petitioner was not available at the given address, because of his transfer and thereafter because of his retirement. There was absolutely no reason for the Court to order registration of FIR under Section 174-A IPC which primarily deals with an accused person absconding his arrest. Learned trial Judge completely ignored the facts and there was no service of summons to the petitioner at any stage because of the reasons beyond his control and even proclamation under Section 82 Cr.P.C. was not a valid proclamation at all because the said affixation of proclamation was at a vacant plot only and the continuation of proceedings on the basis of such

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order and the FIR, Annexure P/3 is complete misuse and abuse of process of the law and the same be quashed.

4. Learned State counsel contended that the petitioner was supposed to appear in the Court as he had no reason to receive the summons and not to appear in the Court after proclamation having been issued in the matter and as such, present petition is liable to be dismissed.

5. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that learned trial Magistrate has completely ignored the basic factors involved in the matter. First of all, the petitioner herein was not an accused, rather a prosecution witness who was working as Deputy Medical Officer with the State Government and had issued MLR while discharging his official duties. Thereafter, he was transferred to different places and because of that, summons could not be served upon him. Subsequently, the petitioner retired from service and because of that summons could not be served upon him. At both the stages, circumstances were much beyond his control. There was no reason with the learned Magistrate to come to such a conclusion that the petitioner was having knowledge and intentionally did not appear before the Court, though as a prosecution witness only. Learned trial Judge failed to discharge his legal duties while passing the impugned order in exercise of powers under Section 156(3) Cr.P.C. ordering registration of FIR under Section 174A IPC against the petitioner, completely ignoring the fact that proclamation was not a valid one and the serving Constable was submitting reports that the plot was vacant and no body was residing at the said plot. On that basis, the Court had no reason to record its satisfaction and to issue proclamation as

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required under Section 82 Cr.P.C.

6. For ready reference, some of the interim orders passed by the Court below in this process are relevant and this Court would like to extract the same as under:-

“Sir, it is requested that Dr. Rajinder Singh has since been transferred to DMC Tarn Taran.

Sd/- SMO
Dt.04.03.2013”

“Sir, it is requested that I visited the civil hospital Abohar and inquired about Dr. Rajinder Singh and found at the spot that Dr. Rajinder Singh has since been transferred and Sh. Banwari Lal Clerk, civil hospital was present who informed me about the same and my report is hereby submitted.

Sd/-04.03.2013.”

“Sir it is requested that Dr. Rajinder Singh has since been retired from this office w.e.f. 31.01.2013 and his place of residence is unknown”.

Sd/- Pharmacist, O/o DMC Tarn Taran.”

“Sir, I visited civil hospital, DMC Tarn Taran and inquired about doctor Rajinder Singh. At the spot Sh. Jaswinder Singh, Pharmacist has submitted a report that Dr. Rajinder Singh has since been retired and his place of residence is unknown.

Sd/-20.12.2013”

“Sir, it is requested that Dr. Rajinder Singh M.O has been transferred to Civil Hospital, Faridkot.

Sd/-S.M.O., Abohar.

“Sir, it is requested that I visited the civil hospital Abohar and inquired about Dr. Rajinder Singh and clerk of the office submitted a report that Dr. Rajinder Singh has been transferred to Faridkot.

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Sd/-28.02.2014.”

“Sir, Dr. Rajinder Singh has since been transferred to Tarn Taran.

Sd/-Veena Rani
Senior Assistant,
O/o Civil Surgeon, Faridkot.”

“Sir it is submitted that I visited civil hospital Faridkot and inquired about Dr. Rajinder Singh and concerned official Veena Rani has submitted report. Report is submitted.

Sd/-
03.04.2014.”

“Sir, Dr. Rajinder Singh service record No.4407 remained posted here as Deputy Medical Commissioner, who has since been retired w.e.f.31.03.2013.

Sd/- Daljit Singh,
Supdt., Civil Hospital
Tarn Taran.”

“Sir, it is requested that I visited the civil hospital Tarn Taran and inquired about Dr. Rajinder Singh at the spot Daljit Singh, Supdt. submitted his report that Dr. Rajinder Singh has since been retired w.e.f. 31.01.2013. Report is submitted.

Sd/-08.07.2014.”

“ Sir, it is requested that I reached at the spot resident of No.1139, New Partap Nagar for service of notice where doctor Rajinder Singh met me and he refused to receive the summons. He has been informed about the name of the Court and the date of hearing. Report submitted.

Sd/-
29.10.2014”

Report is submitted dated for 29.10.2014.”

“Sir, it is submitted that myself HC was remained posted at Election Duty continuous in Moga District and also at Jalalabad. Due to this reason service could not be got

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effected. Request is to give another date, so that the warrants be executed.

Sd/-
Satnam Singh, HC
P.S. City, Abohar,
26.02.2015.”

“It is requested that I visited for proclamation at the address of retired Dr. Rajinder Singh, New Partap Nagar, House No.1137 at Amritsar. **This plot is vacant.** No construction has been made at this plot and I affixed one copy of notice on the wall of the plot, and one at conspicuous place and one copy was pasted at the notice board of the learned court and public was informed about the said proclamation. Report is submitted.

DFC Manjit Singh,
319, along with Staff
Abohar.
Dt.18.03.2015.”

7. Perusal of above extracted orders makes it ample clear that learned Magistrate has not considered the important and relevant facts as well as relevant provisions of law on this point and simply passed order for registration of case under Section 174A IPC and if the same are allowed to continue, that shall be total mis-carriage of justice.

8. Accordingly, order dated 16.01.2017 (Annexure P/2) passed by learned Sub Divisional Judicial Magistrate, Abohar and FIR No.0027 dated 20.2.2017 (Annexure P/3) under Section 174-A IPC registered at Police Station City-I, Abohar and all the subsequent proceedings arising therefrom are hereby quashed.

9. The present petition stands allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

February 13, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes