

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-17792-2018

Date of Decision:05.07.2019

Sukhdev Singh

...Petitioner

Versus

State of Punjab

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Veneet Sharma, Advocate for the petitioner.
Mr.SPS Tinna, Addl. Advocate General, Punjab.

ANIL KSHETARPAL, J.

The petitioner prays for quashing of order dated 12.12.2017 (Annexure P-4) passed by the Judicial Magistrate 1st Class, Amritsar and FIR No.242 dated 23.12.2017 registered under Section 174-A of the Indian Penal Code at Police Station Sultanwind, Amritsar City along with all consequential proceedings arising therefrom.

The petitioner, as a complainant, lodged FIR No.8 dated 14.1.2014 under Sections 451, 380 and 506 IPC at Police Station Sultanwind, District Amritsar. After investigation, challan was presented against the accused and trial started. The complainant was sought to be examined as a witness on behalf of prosecution. However, effort to serve the summons to the petitioner failed, as he had shifted from the address given in the complaint. Strangely, learned Judicial Magistrate initially issued bailable warrant to secure his presence followed by non-bailable warrants, proclamation and consequently declared the petitioner as a proclaimed person.

Learned Judicial Magistrate also ordered registration of FIR under Section 174-A IPC.

The petitioner, on coming to know, applied for anticipatory bail which was granted and ultimately the petitioner has appeared in the aforesaid case. Now sword of FIR no.242 dated 23.12.2017 is hanging on the head of the petitioner quashing whereof has been sought.

Learned counsel for the petitioner has submitted that the petitioner being the complainant in FIR No.8 dated 14.1.2014 could not be declared proclaimed offender. He has further submitted that purpose to declare the proclaimed offender is to secure the presence of the accused and not the complainant/victim. He has further submitted that in any case now the petitioner has appeared and granted bail. He has also submitted that procedure adopted by the prosecuting agency was also erroneous as no effort was made to find out the current address of the petitioner once it had come to the notice of Court and prosecuting agency that he has shifted from the address given at the time of lodging of FIR.

On the other hand, learned counsel for the State submits that the Court has correctly passed the order.

This Court with the help of learned counsel for the parties analysed the arguments and find that the order passed by the learned Judicial Magistrate, declaring the petitioner as a proclaimed person, is erroneous for more than one reason.

The object behind Section 82 Cr.P.C. is to secure presence of a person absconding from the law.

The prosecuting agency was duty bound to find out current correct address of the petitioner before taking any coercive step. There is

no prohibition/restrain on the complainant to change the address or shift to some other place during the pendency of the case before the court.

The court was also in an error while ordering issuance of non-bailable warrants and thereafter declaring the complainant-petitioner as a proclaimed person. The court could have closed the evidence and proceeded with the case.

Arguments of learned counsel for the petitioner that a first informant or victim or a witness sought to be examined for prosecution can never be declared proclaimed person/offender is not required to be dealt with in this case.

In view of the above, the present petition is allowed. The order under challenge is set aside. Once the order has been set aside, FIR which has been registered against the petitioner is also rendered ineffective because the said FIR has been registered only on the basis of aforesaid order. Consequently, FIR No.242 dated 23.12.2017 registered under Section 174-A IPC at Police Station Sultanwind, Amritsar City along with all consequential proceedings arising therefrom shall stand quashed.

05.07.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No