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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-24385-2017 [O&M]

Date of Decision : March 05, 2019

Satender Mor and another Petitioners

Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr.S.S. Narula, Advocate,
for the petitioners.

Ms. Tanu Shree, DAG, Haryana
for respondent-State .

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing of FIR No. 684 dated 21.10.2015 (Annexure P/1) under Section 174-A IPC registered at Police Station Bhiwani City, Bhiwani and all subsequent proceedings and order dated 05.04.2016 (Annexure P/3) whereby the petitioners were declared Proclaimed Offenders and order dated 15.4.2017 (Annexure P/5) passed by learned Additional Sessions Judge, Bhiwani whereby revision petitions filed by the petitioners were dismissed.

2. Facts relevant for the purpose of decision of the present petition; that initially a case under Section 420, 406, 467, 468, 471 and 120-B IPC was registered at Police Station Bhiwani vide FIR No. 476

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dated 23.07.2012 and warrants of arrest issued against the accused persons remained unexecuted. As such, learned Chief Judicial Magistrate passed order dated 26.08.2015 for issuance of proclamation under Section 82 of Cr.P.C. and fixed next date for recording of statements on 07.09.2015. On the basis of said proclamation, ASI Ompal made statement on 7.9.2015 that proclamation was effected and the Court passed the order dated 7.9.2015 declaring the petitioners as Proclaimed Offenders and for that reason, FIR No. 684 dated 21.10.2015 (Annexure P/1) under Section 174-A IPC registered at Police Station Bhiwani City, Bhiwani against the petitioners.

3. Learned counsel for the petitioners contended that the order dated 7.9.2015, whereby the petitioners were declared Proclaimed Offenders is bad in the eyes of law and has not been issued as per requirement of Section 82 Cr.P.C. because the requirement of minimum 30 days notice has not been complied with. For ready reference, Section 82 (1) Cr.P.C. is being extracted hereunder:-

“82. Proclamation for person absconding.- (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, **such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.**

(2). The proclamation shall be published as follows:-

(i).(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b). it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

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(c). a copy thereof shall be affixed to some conspicuous part of the Court- house;

(ii). the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3). A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub- section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.”

4. In view of the above requirement of law, declaration of the petitioners as Proclaimed Offenders is not in accordance with law, firstly because clear cut notice of minimum period of thirty days has not been given for effecting the proclamation and giving of an opportunity to the accused persons to appear before the Court. Secondly, learned trial Judge has not recorded positive satisfaction on the basis of report of proclamation proceedings or any other material or evidence available on the file (as per requirement of Section 82 Cr.P.C.). As such, the order dated 7.9.2015 declaring the petitioners to be Proclaimed Offenders is liable to be set-aside.

5. As the order, which is the basis for registration of FIR No. 684 dated 21.10.2015 (Annexure P/1) under Section 174-A IPC goes, as such, the said FIR registered at Police Station Bhiwani City, Bhiwani is also liable to be set-aside. Such a view was taken by Hon`ble Apex Court in

State of Punjab Vs. Davinder Pal Singh Bhullar and others Etc., 2012

(1) R.C.R. (Criminal) 126 wherein Hon`ble Apex Court observed as under:-

“72. It is settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential

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proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim “ *sublato fundamento cadit opus*” meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.”

6. As per view taken by Hon`ble Apex Court in **Davinder Pal Singh Bhullar's case (supra)**, FIR No. 684 dated 21.10.2015 (Annexure P/1) under Section 174-A IPC registered at Police Station Bhiwani City, Bhiwani and all subsequent proceedings arising therefrom and orders dated 05.04.2016 (Annexure P/3) and 15.4.2017 (Annexure P/5) are quashed/set-aside.

7. Resultantly, the present petition stands allowed and order declaring the petitioners as Proclaimed Offenders and FIR No. 684 dated 21.10.2015 (Annexure P/1) under Section 174-A IPC registered at Police Station Bhiwani City, Bhiwani and all subsequent proceedings arising therefrom are quashed.

(SHEKHER DHAWAN)
JUDGE

March 05, 2019
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes