

130 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-19040-2019 (O&M)

Date of decision:29.04.2019

Ashwani Arya

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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

RAJBIR SEHRAWAT, J. (ORAL)

Prayer in this petition is for quashing of the impugned order dated 22.10.2018 passed by JMIC Gurugram in Complaint No. COMI-10-15 dated 07.01.2015 titled as “Deepak Vs. Ashwani & Another”, vide which, the petitioner has been declared as proclaimed person and further for quashing of the impugned order dated 29.03.2019, vide which the Ld. JMIC, Gurugram, directed the concerned SHO to attach the property of the petitioner and all consequent proceedings arising therefrom.

Learned counsel for the petitioner submits that the petitioner was granted bail by the trial Court in this case. Thereafter, he was regularly appearing before the trial Court and the case was repeatedly adjourned for evidence of the complainant. However, despite availing several opportunities, the complainant did not lead any evidence whatsoever. In that situation, the petitioner came under a wrong impression that he need not appear before the trial Court as no proceedings are being undertaken due to absence of the complainant. As a result, the bail of the petitioner was cancelled. However, the order declaring the petitioner as proclaimed person has been passed without following the procedure, as contemplated under

Section 482 Cr.P.C. The petitioner was never served with any notice, summons and warrants issued by any Court in this regard. Referring to the orders passed by the trial Court, learned counsel for the petitioner has submitted that even the perusal of the orders of the trial Court, would show that the warrants, as ordered by the Court, were not actually issued by the Alhmed of the Court. In view of this situation, counsel for the petitioner has submitted that the police officials have made a wrong statement before the trial Court qua the service upon the petitioner. Since, the petitioner was appearing before the trial Court earlier also, therefore, there was no reason why the petitioner would not appear before the Trial Court again. In the end, it is submitted that after the petitioner was declared as proclaimed person, even the order qua attachment of the properties of the petitioner has been passed by the trial Court. Hence, now the petitioner has come to know of the fact that the petitioner has been declared as proclaimed person and he is required to face the further proceedings before the trial Court. The petitioner has no intention to flee from the course of justice. He intends to appear before the trial Court. The only prayer made is that the petitioner be protected from his arrest.

Notice of motion.

On the asking of the Court, Mr. Munish Dev Sharma, AAG, Haryana, accepts notice on behalf of respondent No.1-State. He has no objection if the petitioner appears before the trial Court to face further proceedings.

In view of the order being passed herein-below, it is not necessary to issue notice of motion to respondent No.2, at this stage.

The objective of the coercive mechanism prescribed under the Code of Criminal Procedure is to ensure that the accused remains present before the Court to receive the orders and punishments as are passed qua the accused. If the accused shows his sincere intention and desire to appear before the Court, then it would not be unjustified to protect him from being arrested.

In view of the above, the present petition is allowed and the impugned orders are quashed, subject to the petitioner appearing before the trial Court on or before 10.05.2019. It is further directed that in case, the petitioner so appears before the trial Court; then the petitioner shall be released on bail on his furnishing bail bonds/sureties to the satisfaction of the trial Court.

(RAJBIR SEHRAWAT)
JUDGE

29.04.2019

Hemlata

Whether speaking/reasoned Yes / No

Whether reportable Yes / No