

CRM-M-42872-2021

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

CRM-M-42872-2021

Date of decision : 09.11.2021

Yusuf Ali

...Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Sudhir Rana, Advocate,
for the petitioner.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

Through this petition, the petitioner lays challenge to the order dated 22.02.2017 (Annexure P-2) passed by the learned Judicial Magistrate Ist Class, Rewari, whereby the petitioner was declared a proclaimed offender in case bearing FIR No.545 dated 23.09.2014, registered at Police Station Dharuhera, District Rewari, under Sections 279, 336, 295 and 120-B IPC and Section 3(2) (E) of the Prevention of Damages to Public Property Act, 1984.

Learned counsel for the petitioner contends that the petitioner being driver by profession, could not appear before the trial Court on 22.07.2015 and ultimately, was declared a proclaimed offender, vide impugned order dated 22.02.2017 (Annexure P-2). He further contends that while declaring the petitioner as proclaimed offender, the trial Court had not complied with the provisions of Section 82 Cr.P.C. for the reason that he has shifted to Rajiv Nagar, Karawal Nagar, North-East, Delhi, but

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the proclamation proceedings were carried out at his earlier address at Hapur (U.P). The petitioner is now ready to appear before the trial Court. Moreover, co-accused, namely, Shamshudeen, who was owner of the vehicle, stood acquitted on 20.08.2018. In support of his contentions, the learned counsel relies upon the judgments rendered by the Hon'ble Supreme Court in Jaswant Singh Vs. State of Punjab and another, Criminal Appeal No.1233 of 2021, decided on 20.10.2021, by the Coordinate Benches in Sudo Mandal @ Diwarak Mandal Vs. State of Punjab 20011(2) RCR (Criminal) 453, Anil Kumar Gupta Vs. State of Haryana and another; Law Finder Doc Id # 778090, and Rajesh Kumar @ Billa Vs. State of Punjab 2019(3) RCR (Criminal) 351.

Notice of motion.

On the asking of this Court, Mr. Ashok Singh Chaudhary, Addl. A. G. Haryana, accepts notice on behalf of the respondent-State, and submits that the petitioner absented himself from the court proceedings w.e.f. 22.07.2015 to 22.02.2017 and after adopting the due procedure under Section 82 Cr.P.C., the petitioner had rightly been declared proclaimed offender. Keeping in view the fact that the petitioner absented himself from the court proceedings for a long period, he does not deserve any leniency. However, as stated above, the learned State counsel does not dispute the acquittal of the co-accused.

I have heard the learned counsel for the parties.

Co-accused faced the trial and nothing was found against him and ultimately, he stood acquitted of the charges. There are bleak chances of conviction of the petitioner, on the same set of evidence. The statutory

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recognition of the inherent jurisdiction of the criminal court indicates that the Courts are empowered to take cognizance and set aside the order declaring the accused as proclaimed offender, when the evidence led by the prosecution has not been relied upon by the trial Court qua the co-accused, who stands acquitted.

This Court is conscious of the fact that the powers under Section 482 Cr.P.C. are to be exercised very sparingly and in exceptional cases, but on the other hand, the miscarriage of justice is also to be taken into consideration to secure the ends of justice.

In view of the above discussion, the impugned order dated 22.02.2017 (Annexure P-2) passed by the learned Judicial Magistrate Ist Class, Rewari, is set aside, subject to depositing the costs of Rs.10,000/- with the District Legal Services Authority, Rewari, by the petitioner.

Allowed in the above-mentioned terms.

09.11.2021

parveen kumar

**(HARNARESH SINGH GILL)
JUDGE**

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No