

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M No.10699-2022
Reserved on: 11-03-2022
Pronounced on: 15-03-2022

Satish Kumar and anotherPetitioners

Vs.

State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Krishan Singh, Advocate for the petitioners.

Mr. Manish Bansal, DAG, Haryana.

ANOOP CHITKARA J.

Complaint/Criminal Case no. before trial Court	CNR No. HRSI03-009248-2015 CIS NO. NI-666-2015 Decided on 25.03.2019
Appeal No.	CNR No. HRSI01006067-2019 CRA-164-2019

Challenging the proclamation orders dated 09.12.2021 and 08.02.2022 passed by the Additional District & Sessions Judge, Sirsa, whereby the learned Additional District Judge, Sirsa has declared the petitioners as a proclaimed offender, the accused came up before this court under section 482 CrPC.

2. The kind of order this court proposes to pass, no notice is required to be issued to the 2nd respondent because it would only further delay the matter and because the proposed order cannot cause any prejudice to it. I have heard learned counsel for the petitioner and State and gone through the record.

3. Upon his conviction for dishonour of cheque, the petitioner had filed an appeal before the appellate court, i.e., Sessions court, Sirsa. Vide order dated 25-4-2019, Ld. Addl. Sessions Judge, had suspended the sentence subject to the appellant depositing 20% of compensation amount, i.e., Rs. 20,000/- within two months. Ld. Court proceeded to record the statement of the convict in this regard. After that the aforesaid amount was never deposited, despite various opportunities.

4. On 18-7-2019, the petitioner no. 1 did not appear before the appellate court despite his counsel being present on the previous date and was aware of the court proceedings. Due to non-compliance of deposit and non-appearance on the date fixed, Ld. Court cancelled the bail and issued arrest warrants against the petitioner for 18-9-2019. The petitioner did not appear, which led to issuance of notice to the surety for 25.3.2020. However, due to COVID-19 lockdown, the matter was adjourned on 23.3.2020, i.e., two days prior in time to 8.4.2020, thereafter to 19.5.2020; to 15.10.2020. Subsequently due to Covid related reasons the matter was adjourned on 01.06.2021 to 21.09.2021. Subsequently due to casual leave of the presiding officer, the matter was adjourned to 2.6.2021. Later on vide order dated 21.9.2021, fresh notices were issued to the surety returnable for 19.10.2021.

5. On 19.10.2021, Ld. Addl. District Judge ordered issuance of proclamation against the accused as well as warrant of arrest of surety of 9.12.2021.

6. On 9.12.2021, Ld. Addl. Sessions Judge declared Satish Kumar as a proclaimed offender and issued proclamation against the surety returnable for 8.2.2021. Aggrieved by the above orders, the convict and his surety have filed the present petition to quash the impugned orders.

7. In paragraph 9 of the petition, the petitioner states that his counsel never informed him about the next date. Without going into the petitioner's defence, as mentioned in paragraph 9, the appeal is pending because of the non-appearance of the convict. The primary purpose for filing an appeal before the appellate court was to re-appreciate the evidence on merits and decide the appeal. However, for the last three years, the appeal has been pending. Now the convict is aware of the proceedings and his being declared a proclaimed offender, and that is why he approached this court for its intervention and offered to deposit 20% of the compensation amount immediately. Thus, before the matter for quashing of proclamation order dated 9-12-2021, which led to a direction for registration of FIR under section 174-A of IPC is adjudicated, it would be appropriate that the petitioner appears before the trial court

within a week.

8. A perusal of the order sheets reveals that on one occasion the matter was adjourned due to casual leave of the Judge and on another due to his illness. On other days, due to COVID lockdown, the matter was adjourned.

9. This court is refraining from adjudicating the quashing of the proclamation on merits, and it shall be open for the petitioner to file a fresh petition for quashing of proclamation and order dated 9-12-2021, after the decision of his appeal by the appellate court. If the petitioners file the fresh petition(s) within two months after the decision, it shall not be barred by limitation. Furthermore, the filing of the present petition shall not come in the way because there is no adjudication of the pleas on merits in the present petition. No coercive steps shall be taken against the petitioners till the decision of the appeal.

10. Thus, in the facts and circumstances peculiar to this case, the petitioner shall appear before the concerned appellate court on or before 21-3-2022. He shall deposit 20% compensation amount by 30-3-2022. This order is subject to the petitioner's undertaking to appear and not seek any adjournment from the appellate court. Needless to say, that no coercive steps shall be taken till 30th April 2022 and the appellate court shall release the petitioner on bail on the bonds of its satisfaction, but which are reasonable.

11. This court requests Id. Appellate court to decide the above-captioned appeal by 30th April 2022. In case the appellant fails to appear or even if he fails to deposit the 20% of compensation amount, the Id. Appellate court will proceed to decide the appeal on merits. If Ld. Counsel for the appellant is absent, then the court shall appoint a legal aid counsel and proceed to hear the appeal on merits. Registry to inform the concerned the concerned court via e-mail and by telephonic instructions.

Petition partly allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

15.03.2022

Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.