

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-48585-2022
Decided on: 19.10.2022

Abhijeet @ Bablu @ Abhijeet Shankar BhagatPetitioner

Vs.

State of Haryana and anotherRespondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: None.

ANOOP CHITKARA J.

Complaint case No.HRS1-03-000636-2018 dated 20.11.2018 titled as Dr. Gobind Gupta vs. Engineer Abhijeet Bhagat and others u/s 14, 14a, 18, 19, 19A, 20 & 21 of TOHO Act, 1994, pending before the learned JMIC, Sirsa

AND

FIR No.	Dated	Police Station	Sections
401	20.08.2022	Sirsa Sadar, Distt. Sirsa	174-A IPC

Bar is abstaining from work.

- By this petition, the petitioner seeks quashing of proclamation order dated 06.06.2022 (P-5) and consequential FIR registered against the petitioner.
- At this stage, after going through the record, this Court permitted the petitioner to file a fresh petition for quashing of FIR and examine only the quashing of proclamation order.
- Seeking the quashing of proclamation order Annexure P-5, the accused has come up before this court under Section 482 of the Code of Criminal Procedure, 1973 (CrPC).
- Petitioner was arraigned as an accused in the above-captioned matter. On failure to serve the petitioner through the ordinary process, including summons, bailable warrants, and even non-bailable warrants, the concerned court finally proceeded against the petitioner under section 82 of CrPC and declared the petitioner a proclaimed offender vide order dated 06.06.2022.
- After going through this petition, this court is of the view that the absence was not willful and was due to factors beyond the petitioner's control.
- The primary object of service is to secure the accused's presence in trial. The petitioner has approached this court on its own, establishing the bonafide at this stage. Without

commenting on the case's merits, and in the facts and circumstances peculiar to this case, and also for the reasons mentioned above, the ends of justice would meet. Furthermore, without adjudicating the maintainability of this petition under section 482 CrPC and leaving that question open; given the explanation offered by the accused coupled with the facts and circumstances peculiar to this case, a balanced approach would work as an incentive, a catalyst, speeding up the process, and bringing the guilty to Justice and Justice to the guilty. Thus, exercising the inherent powers under section 482 CrPC, this court deems it appropriate to grant the following limited relief to the petitioner, subject to compliance with the conditions mentioned in this order.

8. Given the above, the petitioner has made a case on the preponderance of probability that neither any sincere attempt was made to execute the warrants nor did the petitioner have any knowledge about appearance as contemplated under section 82 CrPC. Thus, the order is arbitrary and did not afford reasonable opportunity as mandated under Section 82 of CrPC.

9. Consequently, the impugned order of proclamation dated 06.06.2022, passed by Id. JMIC, Sirsa (Annexure P-5), is set aside, and the non-bailable warrants issued against the petitioner in the FIR captioned above shall not be enforced for fifteen days, and in case the petitioner complies with this order, then warrants shall also stand recalled. The petitioner is directed to appear before the concerned court within fifteen days. The petitioner shall be at liberty to apply for bail before the trial court, and the concerned court shall release the accused on bail on the same date subject to furnishing bonds of its satisfaction. Suppose the petitioner fails to appear within fifteen days from today, in that case, it might be considered that if released on bail, it may not be feasible to produce the accused to face the trial, and consequently, this order shall be recalled automatically under section 362, read 482 CrPC, without further reference to this court.

10. Within 30 days, the petitioner shall deposit a sum of Rs 10,000/- (Rupees ten thousand) in the following account and hand over its receipt to the trial court.

Account Name – “HARYANA POLICE WELFARE FUND”
Account No. - 50100097073807
Account Type - Saving Account
Bank Name - HDFC Bank, Sector-8, Panchkula
IFSC Code - HDFC000108”

Petition allowed subject to the compliance mentioned above with liberty to file a fresh petition for quashing of FIR registered u/s 174 A IPC. Pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

19.10.2022
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Whether speaking/reasoned: Yes
Whether reportable: No.