

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

231

CRM-M-53665-2021
Date of Decision :07.03.2022

Sukhchain Chand

..Petitioner

Versus

State of Punjab and another

...Respondents

(Through Video Conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Harneet Singh Oberoi, Advocate for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Harsimran Singh Sethi, J. (Oral)

The present petition has been filed under Section 482 of the Cr.P.C. for quashing of order dated 18.10.2016 (Annexure P/1) passed by the Sub Divisional Judicial Magistrate, Dasuya, whereby, the petitioner was declared as proclaimed offender.

Learned counsel for the petitioner argues that the petitioner was declared a proclaimed offender vide order dated 18.10.2016 passed by the Sub Divisional Judicial Magistrate, Dasuya without following the procedure as envisaged under Section 82 of the Cr.P.C. Learned counsel for the petitioner submits that the petitioner was never served and, therefore, it was under these circumstances, the petitioner could not appear before the Court to join proceedings. Learned counsel for the petitioner further submits that

in the present case, co-accused of the petitioner namely, Ajay Kumar against whom the similar allegations were alleged, has already been acquitted as no evidence has come on record against him to support the allegations and, hence the petitioner, who is ready to join the proceedings before the trial Court, may kindly be protected.

Learned State counsel on the other hand submits that the impugned order dated 18.10.2016 was passed by the trial Court as the petitioner failed to appear before the Court despite the expiry of 30 days of issuance of notice and, therefore, though, it is a matter of fact that the co-accused of the petitioner namely, Ajay Kumar, against whom similar allegations were alleged, has already been acquitted but, the petitioner who has evaded the proceedings for the last more than five years, should be directed to surrender before the competent Court of law.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

A bare perusal of impugned order dated 18.10.2016 (Annexure P/1) shows that the petitioner was declared proclaimed offender only by recording that the accused had not attended the Court proceedings despite the fact that period of 30 days have elapsed. No finding has been recorded, as to how, the petitioner was served and nothing has been mentioned with regard to the statement of the process server, who has served the petitioner to show that when proclamation was issued and when the petitioner was served so as to record a finding that 30 days have elapsed. Learned State counsel has not been able to controvert that despite the fact that the petitioner was declared as proclaimed offender, no FIR under Section 174-A of the IPC has been registered against him as of now.

The absence of these factual statements in the impugned order, coupled with the fact that co-accused of the petitioner namely, Ajay Kumar, who was facing similar allegations, has already been acquitted of the charges, it is directed that in case, petitioner surrenders before the trial Court/Illaq Magistrate within a period of next ten days, the petitioner be extended benefit of anticipatory bail subject to its satisfaction as the petitioner has undertaken before this Court that henceforth, he will attend all the proceedings before the trial Court so as to ensure that trial against the petitioner is concluded expeditiously.

The petition stands allowed in above terms.

March 07, 2022

aarti

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No