

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

(205)

**CRM-M-10708-2020
Date of Decision: 01.02.2023**

Gurpreet Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Saurabh Kaushik, Advocate, for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

HARKESH MANUJA, J.(ORAL)

By way of present petition filed under Section 482 Cr. P. C., prayer has been made for setting aside the order dated 31.07.2019 (Annexure P-2) passed by the Court of learned JMIC, Nabha, whereby, the petitioner was declared as proclaimed offender as well as for quashing of FIR No.103 dated 06.09.2019 recorded under Section 174-A IPC at Police Station Bhadson, District Patiala, as a consequence thereof.

Brief facts of the case are that the petitioner, besides others, was implicated as an accused in FIR No.99 dated 22.10.2018 registered under Section for the offences under Sections 419, 420, 467, 468, 471, 120-B at Police Station Bhadson, District Patiala, on account of some confusion relating to sale/purchase of a property deal. On account of her non-appearance before the trial Court, the petitioner was declared as proclaimed offender vide order dated 31.07.2019. As a consequence thereof, FIR No.103 dated 06.09.2019 was ordered to be registered against her under Section 174A IPC at Police Station Bhadson District Patiala.

Learned counsel for the petitioner submits that the order dated 31.07.2019 passed by the trial Court whereby, the petitioner was declared as

proclaimed offender has not been passed in consonance with the procedure laid down under Section 82 (1) of the Code of Criminal Procedure. The proclamation was ordered against him by the trial Court on 06.06.2019 which was affixed on 02.07.2019 for appearance on 31.07.2019. Learned counsel for the petitioner submits that the proclamation affixed on 02.07.2019 for 31.07.2019 was for a period of less than 30 days and thus, being in violation of Section 82 (1) of the Code of Criminal Procedure, the petitioner could not have been declared as a proclaimed offender by the trial Court on 31.07.2019 and as a consequence thereof, the subsequent FIR dated 06.09.2019 registered against the petitioner under Section 174-A of IPC was also bad in law.

In addition, learned counsel for the petitioner refers to a settlement dated 30.12.2029 entered into the between the parties to the FIR No.99 dated 22.10.2018, to submit that petitioner along with her mother have already paid the entire sum of Rs. 30 Lakhs to the complaint of FIR No.99 dated 22.10.2018.

On the other hand, the prayer made in the petition has been opposed at the instance of learned State counsel who submits that the non-appearance of the petitioner before the trial Court was a deliberate attempt on her part to delay the proceedings in trial. Learned State counsel further submits that the mother of the petitioner being one of the accused in FIR no.99 dated 22.10.2018, she was having complete knowledge about the pendency of the proceedings arising out the same FIR and thus, the shelter of non- compliance of Section 82(1) Cr.P.C. was not available to her.

I have heard learned counsel for the parties and have gone through the paper book. I find substance in the submissions made on behalf of petitioner.

A perusal of the order dated 31.07.2019 shows that the proclamation under Section 82 (1) Cr.P.C. was issued against the petitioner vide order dated 06.06.2019 whereas, the affixation was made on 02.07.2019 for 31.07.2019 being the date of appearance. Meaning thereby, a clear period of 30

days as provided under Section 82(1) Cr.P.C. for the purpose of appearance of the petitioner was never afforded to her thereby making the affixation being bad in law. Section 82(1) Cr.P.C. being a safeguard provide to an individual pertaining to his right to life and liberty being mandatory is inviolable, the same having not been followed strictly by the trial Court while passing the order dated 31.07.2019 thus, renders the same to be illegal. The aforesaid view is derived from the judgment rendered by this Court in **Gurpreet Singh Vs. State of Punjab**, passed in CRM-M-48457 of 2021 dated 16.5.2022. The relevant para No.4 is reproduced hereunder:

“4. Keeping in view the factual position, as noticed in order dated 17.01.2022, it is apparent that a clear period of 30 days w.e.f. the date when proclamation was actually affected upto the date nominated for causing appearance i.e. 28.08.2017 was not afforded to the petitioner and it is only a period of 26 days, which was afforded. Thus, bearing in mind the law laid down in Ashok Kumar's case (supra) and Anita Sharma's case (supra), the impugned order cannot sustain and is hereby set aside. The petition is accepted accordingly.”

Resultantly, the present petition is allowed and the order dated 31.07.2019 passed by the trial Court declaring the petitioner to be a proclaimed offender is quashed. Once the order dated 31.07.2019 has been held to be bad in law the FIR No.103 dated 06.09.2019 recorded under Section 174-A IPC at Police Station Bhadson, District Patiala, against the petitioner in consequence thereof has no legal basis to stand alone, consequently, the FIR dated 103 dated 06.09.2019 as well as all consequential proceedings arising therefrom are also ordered to be quashed.

(HARKESH MANUJA)
JUDGE

01.02.2023
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