

2023: PHHC: 143897

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

CRM-M-12870-2023

Date of Decision: 09.11.2023

Gobind Singh @ Gobind Singh Sidhu

. . . . Petitioner

Vs.

State of Punjab

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Tarun Singla, Advocate, for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

DEEPAK GUPTA, J.

CRM-46947-2023

This is an application filed under Section 482 CrPC to place on record copy of zimini orders from 27.03.2019 to 29.11.2022 [Annexure P5 (colly)], report on the warrants of arrest [Annexure P6] and report on the proclamation [Annexure P7] and also to exempt from filing certified copies thereof.

Considering the fact that documents proposed to be produced have come from the judicial record, the application is allowed. Annexures P5 (colly) to P7 are taken on record. Filing of the certified copies thereof is exempted.

CRM-M-12870-2023

By way of this petition filed under Section 482 CrPC, petitioner has prayed for quashing of FIR No.162 dated 21.11.2022

registered at Police Station Dayalpura, District Bathinda, under Section 174A IPC and all the subsequent proceedings arising therefrom.

2. (i) It is contended by Id. counsel that the criminal complaint [CNR N: PPBTB1-000206-2019] under 138 of the Negotiable Instruments Act, 1881 [for short 'the NI Act'] was filed by the Bathinda Central Cooperative Bank, Branch at Bhagta, Tehsil Phul, District Bathinda against the petitioner regarding dishonour of a cheque for an amount of ₹1,27,000/. Petitioner had put in appearance in the complaint and was admitted to bail. During proceedings, he could not appear on certain dates nor could make payment as per the undertaking. He was declared proclaimed person and on the direction of the Court, FIR in question under Section 174A IPC was registered against him.

(ii) Ld. counsel contends further that matter has since been compromised with the complainant/Bank. The complainant/Bank has received the entire amount and the counsel for the complainant made a statement before the trial Court concerned, copy of which is Annexure P3 and the complaint was then dismissed as withdrawn vide order dated 29.11.2022 (Annexure P4).

(iii) Ld. counsel further contends that apart from the fact that matter has already been compromised amongst the parties, the petitioner was declared proclaimed person in violation of Section 82 CrPC. It is also argued that order dated 08.09.2022 (forming part of Annexure P5) is contrary to the report on the warrants of arrest. Ld. Counsel also points out that there was no proclamation for the date, on which petitioner was declared proclaimed person.

3. Ld. State counsel could not refute the abovesaid factual and legal position but opposed the petition on account of conduct of the petitioner, who misused the concession of bail.

4. Heard. As per order dated 02.08.2022, the bail of the petitioner was cancelled and warrants of arrest was directed to be issued for 08.09.2022. As per order dated 08.09.2022, the warrants were received with the report that wife of the petitioner was intimated regarding date of hearing, but as the petitioner had not appeared before the court so, proclamation under Section 82 CrPC was directed to be passed. However, the report dated 06.09.2022 appended with the warrants of arrest meant for 08.09.2022 (Annexure P6) would reveal that it was reported by the Executing Constable that there was a lock on the main gate of the house and that neighbour had disclosed that members of the entire family had gone to attend the marriage. There is no reference in the said report that wife of the petitioner had met the Executing Constable or was informed about the next date of hearing. Thus, the order dated 08.09.2022 passed by the ld. Magistrate is contrary to the report on warrants of arrest.

5. Still further, ld. counsel for the petitioner has rightly drawn attention towards the fact that as per order dated 08.09.2022, proclamation was directed to be issued for 21.10.2022. Said date is also mentioned on the proclamation notice, requiring the petitioner to surrender before the Court on or before 21.10.2022. However, the order dated 21.10.2022 passed by ld. Magistrate reveals that though proclamation was received back duly executed vide report dated 22.09.2022, but the matter was adjourned for serving notice to the serving official for 05.11.2022. The serving official

proved his report to have executed the proclamation on 22.09.2022. Based upon his statement, the petitioner was declared proclaimed person on 05.11.2022. It is, thus, evident that on 21.10.2022, for which date, the proclamation was issued and on or before which the petitioner was required to surrender before trial Court, the period of 30 days had not elapsed as the proclamation was effected on 22.09.2022; whereas on 05.11.2022, when the petitioner was declared proclaimed person, there was no proclamation for that date. Thus, there is a clear violation of mandatory provision of Section 82 CrPC. Reliance can be placed on **CRM-M-27012-2023** titled as **Jatinder Kumar Vs. State of Punjab** decided on 31.07.2023.

6. In view of all the aforesaid circumstances, FIR No.162 dated 21.11.2022 registered at Police Station Dayalpura, District Bathinda, under Section 174A IPC, which is registered consequent to the order dated 05.11.2022 of the trial Court declaring the petitioner as proclaimed person, and all the subsequent proceedings arising therefrom are hereby quashed.

Disposed of.

09.11.2023

Vivek

(DEEPAK GUPTA)
JUDGE

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No