

S. No.251

2023:PHHC:121522

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

**CRM-M-31029 of 2018
Date of Decision:14.09.2023**

Sandeep AnandPetitioner
Vs.
State of Haryana and anotherRespondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Jasraj Singh, Advocate for the petitioner.

Mr. Vipul Sherwal, AAG, Haryana.

DEEPAK GUPTA, J. (Oral)

Prayer in this petition is for quashing order dated 13.11.2017 (Annexure P.12), whereby petitioner was declared proclaimed person in Criminal Complaint Case No.NI Act-8140 of 2016 titled “Rajiv Nayyar Vs. Wianxx Impex Pvt. Ltd and others” under Section 138 of the NI Act along with all the subsequent proceedings considering that at the relevant time, petitioner was in judicial custody in other case along with other subsequent proceedings.

Annexure P.1 is the complaint, which was filed by respondent No.2- Rajiv Nayyar against Wianxx Impex Pvt. Ltd and others to prosecute them under Section 138 of the NI Act. Sandeep Anand is one of the accused arrayed in the complaint. After recording preliminary evidence, summoning order was passed on 26.07.2016 copy of which is Annexure P.2 whereby accused including petitioner was directed to be summoned for 19.09.2016.

Learned counsel for the petitioner drawn attention towards the custody certificate issued by Superintendent Central Jail, Tihar (Annexure P.3)

revealing that petitioner – Sandeep Anand was in custody in another case in the said Tihar Jail ever since 13.07.2016.

Learned counsel for the petitioner contends that by concealing the afore-said fact from the Court concerned, warrants of arrest were later on got issued against the petitioner on the basis of his presumed service.

Apart from above, learned counsel pointed out that vide order dated 15.07.2017 (Annexure P.9) trial Court directed issuance of proclamation under Section 82 Cr.P.C for 14.09.2017. As the said proclamation was not received back on 14.09.2017, fresh proclamation was directed to be issued for 13.10.2017 as per Annexure P.10. On 13.10.2017, statement of the Executing Constable was recorded regarding publication of the proclamation and as the period of 30 days had not elapsed, so matter was adjourned to 13.11.2017 for presence of the accused and on non-appearance of the accused- petitioner on 13.11.2017, he was declared proclaimed person and direction was issued to initiate proceedings under Section 174-A IPC against him.

Learned counsel for the petitioner contends that 30 days' period had not elapsed upto 13.10.2017, for which date the proclamation is issued; whereas there was no proclamation issued for 13.11.2017, on which date petitioner was declared proclaimed person as per impugned order Annexure P.12.

Learned State Counsel could not refute any of the afore-said contentions.

Having regard to the contentions made by learned counsel for the petitioner as noticed above, which clearly reveal sheer violation of the mandatory

provisions of Section 82 Cr.P.C., the present petition is accepted. Impugned order dated 13.11.2017 (Annexure P.12) and all the consequent proceedings arising therefrom, are hereby quashed.

September 14, 2023

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Whether Speaking/reasoned

Whether Reportable

(DEEPAK GUPTA)

JUDGE

Yes/No

Yes/No