

CRM-M-19971-2023 (O&M) 2023:PHHC:107265

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-19971-2023 (O&M)

Date of decision: 18.08.2023

Suresh Kumar Soni

....Petitioner

versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Satnam Miglani, Advocate for
Mr. B.S. Beniwal, Advocate for petitioner.

Ms.Svaneel Jaswal, Addl.AG., Haryana.

ARUN MONGA, J. (ORAL)

Present petition has been filed under section 482 Code of Criminal Procedure for quashing of order dated 10.03.2023 (Annexure P-3), whereby petitioner was declared as a proclaimed person and FIR No.270 dated 17.03.2023 (Annexure P-4), registered under Section 174-A of the IPC, at Police Station, Civil Lines, District Sirsa and all subsequent proceedings emanating therefrom.

2. Notice of motion.

3. On advance service of copy of petition, learned State counsel appears and accepts notice on behalf of respondent-State of Haryana.

4. Given the nature of order being passed, there is no necessity to issue notice to respondent No.2, as no serious prejudice would be caused to him. Notice to respondent No.2 is thus dispensed with.

4. Learned counsel for the petitioner contends that matter stands settled as entire cheque amount of Rs.2 Lakh has been paid to the complainant/respondent no.2 and complaint case under Section 138 Negotiable Instrument Act, 1881 (for short 'the Act') has also been withdrawn vide order dated 18.03.2023 (Annexure P-5). He further contends that no useful purpose would be served by keeping the present proceedings pending.

5. Learned State counsel opposes the prayer made and submits that order declaring petitioner as a proclaimed person has rightly been passed. He further submits that the offence under Section 174-A IPC is independent of the main case.

6. Arguments heard.

7. The complaint against the petitioner was for an offence under section 138 of the Act.

7.1 Vide order dated 10.03.2017 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Sirsa, recorded its satisfaction that the accused-petitioner had absconded, declared him as a proclaimed person and directed that intimation be sent to the concerned police station to initiate proceedings against him under section 174-A of IPC. FIR No.270 dated 17.03.2023, under Section 174-A of the IPC was registered at Police Station Civil Line, Sirsa, alleging that the Court had declared the petitioner a proclaimed person. In my opinion, the very order declaring the petitioner a proclaimed person/offender was/is not legal.

7.2 Section 82(1) of the Code of Criminal Procedure provides that if any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation. The provisions for declaring a person as proclaimed offender are contained in sub section (4) of the section 82 *ibid*. It lays down that where a proclamation published under sub-section (1) is in respect of person accused of offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the IPC, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

7.3 The complaint against the petitioner under Section 138 of the Act was for an offence other than aforesaid offences specified in sub section (4) of the section 82

ibid. This being the position, the order dated 18.03.2023 Annexure P-3 passed by the learned Judicial Magistrate 1st Class, Sirsa declaring the petitioner a proclaimed person was/is not legal. The said order is the basis of the registration of the FIR under section 174A IPC against the petitioners and is, therefore, fatal to the FIR.

7.4 Moreover, the complaint under Section 138 of the Act has already been withdrawn following payment of the due amount by the petitioner to the complainant. Present proceedings under section 174-A IPC against the petitioner are consequential to the proclamation under section 82 Cr.P.C issued in the proceedings of the said complaint.

8. Considering the aforesaid facts and circumstances, I am of the opinion that the impugned FIR and all subsequent proceedings emanating therefrom are liable to be quashed.

9. Accordingly, the order dated 10.03.2023 (Annexure P-3) is hereby set aside and FIR No.270, dated 17.03.2023, registered under Section 174-A of the IPC, at Police Station Civil Line, District Sirsa along with all consequential proceedings arising therefrom against the petitioner, are quashed.

10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

18.08.2023
'D'vir/R

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