

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

244**CRM M-54398 of 2018****Date of Decision: 11.12.2023**

Kuldeep Singh @ Raju

...Petitioner

Versus

State of Punjab and another

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

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

Mr. Mohit Chaudhary, AAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the FIR No. 139 dated 14.08.2009 under Sections 452, 511, 506, 427 and 34 IPC registered at Police Station Mahilpur, District Hoshiarpur (Annexure P-1) and all subsequent proceedings arising therefrom. A further prayer has been made to quash the order dated 11.02.2012 (Annexure P-3) passed by the trial Court, whereby, the petitioner has been shown to be proclaimed offender, without any proclamation order.

2. The present case was taken up for hearing on 15.10.2019 passed by this Court and the following order was passed:-

“The petitioner is seeking two reliefs in this petition.

Firstly, quashing of order dated 11.02.2012 whereby he

was declared as proclaimed offender and secondly, quashing of FIR on the basis of compromise.

For the first relief as discussed above, notice of motion for 20.01.2020”.

3. As is evident from the above order, notice of motion was issued by this Court with regard to the prayer made by the petitioner for quashing of the order dated 11.02.2012 whereby he has been declared as proclaimed offender and the second prayer was not pressed. Even, during the course of hearing, learned counsel for the petitioner did not press his prayer with regard to quashing of the FIR at this stage and confined his relief to the extent of quashing of the order dated 11.02.2012 passed by the trial Court, whereby, the petitioner has been declared /shown as proclaimed offender.

4. Learned counsel for the petitioner has submitted that the occurrence in the present case has taken place on 08.08.2009 and one FIR No. 139 dated 14.08.2009 under Sections 452, 511, 506, 427 and 34 IPC registered at Police Station Mahilpur, District Hoshiarpur (Annexure P-1) was registered against the petitioner and others on the basis of the statement made by respondent No. 2. After investigation, the challan was presented against the petitioner, Tarsem Singh, Satbir Singh @ Siblu and Onkar Singh. The petitioner had already gone abroad and could not join the investigation.

4. During the course of trial, the petitioner absented himself on 18.03.2011 and his surety bonds/bail bonds were ordered to be cancelled and forfeited and the arrest warrants were issued for 16.05.2011. Even on 16.05.2011, the petitioner could not appear and the proclamation warrants were issued for 28.01.2012. On 28.01.2012, the proclamation warrants of Kuldeep Singh @ Raju were received back duly executed and statement of serving constable HC Rajinder Pal was recorded. However, on 28.01.2023, the statutory period of 30 days had been expired and the case was adjourned to 11.02.2012 for awaiting appearance of the petitioner. On 11.02.2012, the petitioner was to be declared proclaimed as a proclaimed offender, however, no specific order declaring the petitioner as proclaimed offender was passed. A perusal of the the order dated 28.01.2012/11.02.2012 (Annexure P-3) would clearly show that no formal order declaring the petitioner as proclaimed offender was passed and he was simply shown to be proclaimed offender illegally. Thereafter, the trial Court continued against his co-accused and vide judgment dated 04.07.2015, all the accused were ordered to be acquitted by the trial Court vide judgment dated 04.07.2015 passed by the Court of Judicial Magistrate 1st Class, Hoshiarpur (Annexure P-4). Ultimately, the matter was compromised between the parties and the petitioner wanted to come and surrender before the trial court. Learned counsel for the petitioner submitted that the petitioner was still

staying abroad and wanted to appear before the trial Court and join the trial proceedings.

5. On the other hand, learned State counsel submitted that the petitioner had absented during the trial proceedings and did not deserve the relief claimed in the instant petition. Learned State counsel submitted that nonailable warrants were issued against the petitioner and the proclamation was received back duly executed on 28.01.2012. Since, the statutory period had not expired on 28.01.2012, the case was adjourned to 11.02.2012 for awaiting appearance of the petitioner, however, the petitioner did not appear and was declared to be proclaimed offender. However, a perusal of the record would show that there is no formal order declaring the petitioner as proclaimed offender.

6. Having heard learned counsel for the parties and perusing the record, this Court is of the considered opinion that the impugned order dated 11.02.2012 (Annexure P-3) whereby, the petitioner has been declared/shown as proclaimed offender is liable to be quashed. Section 82 of Code of Criminal Procedure confers powers on the Courts to declare an accused as proclaimed offender/proclaimed person, after following the prescribed procedure, if such accused intentionally avoids appearance before the trial Court. However, the Court is bound to pass a speaking order, declaring the accused as a proclaimed offender. Before passing any such order, the Court is

bound to record its satisfaction that the Court has reason to believe whether after taking evidence or not, that any person, against whom, warrant has been issued by it has absconded or concealing himself so that such warrant cannot be executed. In the present case, from a bare perusal of the order dated 28.01.2012, it is evident that on the said day, the proclamation warrants of the petitioner had been received back duly executed and the statement of serving Constable was recorded. Since, the statutory period had not expired, consequently, the matter was adjourned to 11.02.2012 for the appearance of the petitioner. On the said day, the petitioner was not declared as proclaimed offender, however, surprisingly on the next date, i.e.11.02.2012, in the order, the petitioner has been shown as proclaimed offender, while recording his absence, but no formal order declaring him proclaimed offender was passed. Thus, the impugned order dated 11.02.2012 is illegal and liable to be quashed by this Court.

7. Since, the petitioner has not surrendered before the trial Court and has not joined the trial proceedings, the petitioner is directed to surrender before the trial Court within a period of 04 months from today and he shall be admitted to bail and shall continue to appear before the trial Court during the Court proceedings.

8. In view of above, the petition is allowed and impugned order dated 11.02.2012 (Annexure P-3) passed by the trial Court is ordered to be quashed.

11.12.2023

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No