

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

Sr. No.232

CRM-M-25985-2019

Date of Decision: 01.05.2023

AYUSH SAXENA

.... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Abhinav Sood, Advocate and
Mr. Deepka Sood, Advocate and
Mr. Anmol Gupta, Advocate
for the petitioner.

Mr. R. K. Ambavta, AAG, Haryana.

HARKESH MANUJA, J. (ORAL)

1. The present petition has been filed under Section 482 of Cr.P.C. seeking quashing of the order dated 01.06.2018 passed by the Court of JMFC Gurugram in FIR No.106 dated 14.03.2016, registered under Section 68 of the Punjab Excise Act, 1914, at Police Station Sector 40, Gurugram, whereby the petitioner was declared as proclaimed offender.

2. In the aforementioned FIR, the offence being bailable, the petitioner was granted concession of regular bail on the same day. Upon completion of investigation, the *challan* was presented before the trial Court on 01.04.2017 followed by issuance of notices to the petitioner, which were not received back either served or otherwise. Faced with this the trial Court vide order dated 27.07.2017, instead of issuing bailable warrants directly issued non-bailable warrants against the petitioner. Even the non-bailable warrants having not been served upon him, the petitioner was ordered to be served through proclamation

under Section 82 of the Code of Criminal Procedure, as per order dated

26.03.2018 with 01.06.2018 being the date for putting in appearance. Based on the proclamation effected on 01.05.2018, the petitioner was declared as proclaimed person vide the order dated 01.06.2018.

(3) Impugning the order dated 01.06.2018 passed by the learned trial Court, learned counsel for the petitioner by referring to the zimni orders attached along with the petition as Annexures P-8 to P-13 submits that the Court below failed to adhere to the mandatory procedure as prescribed under Chapter-VI of the Code of Criminal Procedure. He further submits that the procedure of summoning the petitioner was carried out upon on his incorrect and incomplete address.

(4) On the other hand, learned State counsel submits that the petitioner was having complete knowledge about the pendency of the proceedings pending against him and was deliberately evading the process of law and thus cannot be permitted to take the benefit of the technicalities as pointed out by him while impugning the order declaring him as proclaimed offender.

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

A perusal of the record shows that an effort was made to serve the petitioner at his Faridabad address, however, the process serving agency as well as the police officials who visited the said address for the purpose of effecting service of bailable/non-bailable warrants upon the petitioner, categorically recorded that no one in the name of petitioner was residing at the aforesaid address and thus, asked for providing the correct address. Without making any effort to procure the correct address of the petitioner, proclamation under Section 82 Cr.P.C. was apparently ordered and made effective on the same

address i.e. of Faridabad which in the given facts and circumstances was a mere futile exercise.

(6). In view of the aforesaid facts the trial Court was first required to find out the correct residential address of the petitioner for the purposes of effecting valid service upon him before proceeding under Section 82 of the Code of Criminal Procedure. The proceedings thus having been carried out against the petitioner at an incomplete/incorrect residential address thus were uncalled for and against the object of the provision itself. In view of the discussion made hereinabove the impugned order dated 01.06.2018 passed by the trial Court is hereby quashed. The present petition is allowed. Considering the fact that the FIR in question was registered against the petitioner in April 2016 i.e. about 10 years back, the petitioner is directed to appear before the trial Court within a period of 2 weeks from today and furnish his bail bonds and surety bonds to the satisfaction of the concerned Court. The trial Court is further requested to decide the proceedings preferably within a period of 6 months. In view of the above, present petition is disposed of subject to payment of costs of Rs.10,000/- to be deposited with the Punjab and Haryana High Court Association Lawyer's Family Welfare Fund having Account No.41564846387 with State Bank of India, High Court Branch, Chandigarh, within a period of one month from today.

May 01st, 2023

M.Sikka/ani1

(HARKESH MANUJA)
JUDGE

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