

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CRM-M-27012-2023 (O&M)
Jatinder Kumar Petitioner

Vs.

State of Punjab and another Respondents

2. CRM-M-31413-2023(O&M)
Jatinder Kumar Petitioner

Vs.

State of Punjab and another Respondents

DATE OF DECISION: 31.07.2023

CORAM: HON’BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Gurjinder Singh, Advocate, for
Mr. Navjot Singh, Advocate, for the petitioner.

CRM-31201-2023 in
CRM-M-27012-2023

This is an application to place on record zimini orders passed by the trial Court before declaring him as a proclaimed offender in complaint case titled *Jatinder Kumar Vs. State of Punjab and others*, as Annexure P5.

Application is allowed.
Annexure P-5 is taken on record.

**CRM-M-27012-2023 &
CRM-M-31413-2023**

This order shall dispose of two petitions mentioned above, as both of them have arisen out of the same proceedings.

2. CRM-M-31413-2023 has been filed to quash order dated 22.11.2022 passed by the Court of Id. JMIC, Hoshiarpur, whereby the

petitioner was declared proclaimed offender in Criminal Complaint (Annexure P3) under Section 138 of the Negotiable Instrument Act, 1881 [for short 'the NI Act'] bearing NACT No.82 of 2019 along with all the consequential proceedings arising therefrom, as petitioner had already appeared before the trial Court in compliance of the order dated 13.04.2023 passed by this Court in CRM-M-17933-2023.

3. In CRM-M-27012-2023, prayer is made for quashing of FIR No.77 dated 06.03.2023 registered at Police Station Model Town, District Hoshiarpur under Section 174A of the IPC in the aforesaid complaint case.

4. As it emerges on perusal of Annexure P5 (*placed on record by way of CRM-31201-2023 in CRM-M-27012-2023*), complaint under Section 138 of the NI Act was filed by respondent Suveer Singh Manhas to prosecute the petitioner (Jatinder Kumar) under Section 138 of the NI Act, wherein after recording preliminary evidence, petitioner was directed to be summoned vide order dated 15.02.2019. He appeared in the Court on 27.02.2019 and was allowed regular bail. However, on 09.09.2022, petitioner did not appear, his bail was canceled and personal bonds were forfeited. Warrants of arrest and the proclamation issued against him, failed to procure his presence and so, he was declared proclaimed offender vide order dated 22.11.2022 (*subject matter of challenge in CRM-M-31413-2023*). Pursuant to the direction of the Court, FIR No.77 dated 06.03.2023 was registered at Police Station Model Town, District Hoshiarpur under Section 174A of the IPC, which is the subject matter of CRM-M-27012-2023.

5. It is contended by Id. Counsel that petitioner was declared proclaimed offender without following the due process of law. He was not

served prior to declaring him as proclaimed offender. Still further, it is contended that though the proclamation was directed to be issued for 27.10.2022, which was published on 22.10.2022, but the petitioner was declared proclaimed offender on 22.11.2022, for which date there was no proclamation.

6. Ld. State counsel has opposed the petition by pointing out towards the conduct of the petitioner, who did not appear before the trial Court despite having been granted bail and thus, he misused the concession of bail. Ld. State counsel contends that simply because petitioner has later on appeared before the trial Court, the same cannot be a reason to quash the order, whereby he was declared proclaimed offender or the consequent FIR under Section 174A IPC.

7. I have considered submissions of both the sides and perused the record.

8. Perusal of the various zimini orders passed by the trial Court (Annexure P5 collectively) would reveal that petitioner had been allowed bail on 27.02.2019. Thereafter, he moved repeated applications for exemptions or remained absent and every time, notice was to be sent to him. Ultimately, his bail had to be canceled on 09.09.2022. At the same time, it is revealed that trial Court ordered issuance of the proclamation under Section 82 Cr.P.C. vide order dated 19.09.2022. The proclamation required the petitioner to appear in the Court on 27.10.2022. The order dated 27.10.2022 reveals that the proclamation was effected on 20.10.2022 i.e. just 7 days prior to the actual date fixed for appearance of the petitioner. Having noticed that a period of 30 days had not elapsed, the trial Court adjourned the matter for 22.11.2022 and then declared the petitioner as

proclaimed offender vide order dated 22.11.2022, despite the fact that there was no proclamation for 22.11.2022.

9. It is, thus, clear that order declaring the petitioner as proclaimed offender is *per se* illegal, having been passed in violation of Section 82 Cr.P.C, as there was no proclamation for surrender/appearance of the petitioner before the trial Court on 22.11.2022.

10. As such, the impugned order dated 22.11.2022, whereby petitioner was declared proclaimed offender and the subsequent FIR No.77 dated 06.03.2023 registered at Police Station Model Town, District Hoshiarpur under Section 174A of the IPC, registered on the basis of the aforesaid order, along with all consequent proceedings, are hereby quashed. However, at the same time, having taken into account the conduct of the petitioner, who absented from trial by misusing the concession of bail and thus, caused the delay in the trial of the case, is burdened with cost of ₹10,000/- to be deposited by him with the District Legal Services Authority, Hoshiarpur. Both petitioners are accordingly disposed of.

11. A photocopy of this order be placed on the file of another connected case.

(DEEPAK GUPTA)
JUDGE

31.07.2023
Vivek

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

Yes/No
Yes/No