

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-33529-2023 (O&M)
Date of Decision: 27.07.2023

Surinder Kohli
...Petitioner

Versus

State of Haryana
...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Saransh Sabharwal, Advocate,
for the petitioner.

VIKAS SURI, J.

CRM-30654-2023

Copy of order dated 14.07.2023 passed by the Court below in
case titled *State of Haryana vs. Surinder Kohli* is taken on record as
Annexure P-6, subject to just exceptions.

CRM stands disposed of.

CRM-M-33529-2023 (O&M)

1. The instant petition preferred under Section 482 Cr.P.C. is for
quashing of order dated 14.07.2022 (Annexure P-5) in case FIR No.379
dated 19.03.2019, under Section 174-A IPC, registered at Police Station
Shivaji Nagar, District Gurugram, in case No.CHI2549/2021, titled *State of
Haryana vs. Surinder Kohli* and subsequent proceedings emanating from the
said order.

2. Learned counsel for the petitioner has contended that the

petitioner was prosecuted by the complainant in Complaint No.NACT/ 23928/ 2013 instituted on 16.04.2012. He submits that the petitioner did not have any knowledge about the abovesaid complaint and was never served on his address, thus, could not appear before the trial Court. Further, it has been submitted that vide order dated 24.05.2013, learned Judicial Magistrate Ist Class, Gurugram, declared the petitioner as proclaimed person and a direction was issued to the SHO concerned for registration of a case under Section 174-A of IPC against him, pursuant to which the abovementioned FIR was registered against the petitioner.

3. Learned counsel for the petitioner has submitted that in the said FIR, petitioner had earlier approached this Court by filing CRM-M-49068-2019 for grant of anticipatory bail, which was allowed vide order dated 29.01.2020. Thereafter, challan was presented before the Court on 13.07.2021, when notice was ordered to be issued to the petitioner for 25.01.2022. Counsel submitted that the said notice was never served upon the petitioner. Thereafter, again notice was ordered to be issued for 14.07.2022 but the same was not served upon the petitioner. On the said date, bail of the petitioner was cancelled and warrants of arrest were ordered to be issued. Thereafter, proclamation under Section 82 Cr.P.C. was ordered to be issued against the petitioner several times and now the case is posted for 11.10.2023 for his presence.

4. Learned counsel for the petitioner has stated that the petitioner has been acquitted in the proceedings under Section 138 of Negotiable Instruments Act vide judgment dated 19.05.2023 (Annexure P-2) and

nothing is due against the petitioner. It is further submitted that in view of acquittal of the petitioner, prosecution of the petitioner would be nothing but an abuse of process of the Court. He submits that the petitioner was not aware of the fact that challan against the petitioner has been presented before the Court and he has never been served by any notice, warrants or proclamation.

5. Learned counsel submits that the absence of the petitioner before the Court is not intentional, rather due to his being unaware about the presentation of challan and pendency thereof. It has been informed that the case is now fixed for 11.10.2023 for presence of the petitioner. Counsel submits that petitioner is ready to appear before the trial Court and abide by all the terms and conditions imposed by the Court. He submits that the petitioner is keen to join the proceedings. Learned counsel also submits that the petitioner volunteers to deposit a sum of ₹20,000/- for any social cause to benefit the society at large.

6. Notice of motion.

7. Mr. Gurbir S. Dhillon, AAG, Haryana, accepts notice on behalf of respondent-State and waives service. He submits that petitioner was rightly declared as a proclaimed person, pursuant to which above-mentioned FIR was registered against him. He further submits that the petitioner is intentionally evading the process only to delay the proceedings.

8. I have heard counsel for the parties and perused the record.

9. It is apparent that the petitioner has been acquitted in the proceedings under Section 138 of Negotiable Instruments Act by the trial

Court vide judgment dated 19.05.2023 (Annexure P-2). The FIR in question has been registered on account of absence of the petitioner in the said proceedings. The petitioner was granted the concession of anticipatory bail by this Court, pursuant thereto he had joined investigation. Thereafter, challan was presented before the Court but petitioner was not informed regarding presentation of challan. Thereafter, notices, warrants or proclamation have been issued against the petitioner but the same were never served upon him.

10. A coordinate Bench of this Court in ***Ashok Madan vs. State of Haryana and another, 2020 (4) RCR (Criminal) 87***, has held as under:-

“No doubt, the learned counsel for the respondent has vehemently argued that the offence under Section 174A I.P.C. is independent of the main case, therefore, merely because the main case has been dismissed for want of prosecution, the present petition cannot be allowed, however, keeping in view the fact that the present FIR was registered only on account of absence from the proceedings in the main case which had been subsequently regularised by the court while granting bail to the petitioner, the default stood condoned. In such circumstances, continuation of proceedings under Section 174A I.P.C. Shall be abuse of the process of court.

Accordingly, the petition is allowed. FIR No.446 dated 21.08.2017, registered under Section 174A I.P.C. At Police Station Kotwali, District Faridabad, as well as consequential proceedings shall stand quashed.”

11. A similar view has been taken by this Court in CRM-M-5878-2022, titled *Anil Kumar Versus Jitender Kumar and another*, decided on 06.04.2022 and in CRM-M-42551-2021, titled *Varinder Kumar @ Virender Kumar Versus State of Haryana and another*, decided on 19.04.2022.

12. Keeping in view the fact that the reason for absence of the petitioner is not intentional and he is keen to join the proceedings, no useful purpose would be served by sending him behind the bars rather it will be appropriate if he is allowed to join the proceedings before the Court below. So keeping in view the abovesaid facts, the present petition is allowed and the order dated 14.07.2022 (Annexure P-5), whereby bail of the petitioner was cancelled, alongwith all subsequent proceedings emanating therefrom, are, hereby, set aside, subject to payment of ₹20,000/- as costs to be deposited with the Poor Patients' Welfare Fund, PGIMER, Chandigarh, (<https://pgimer.edu.in/>) by petitioner within a period of 10 days from today.

13. In case the petitioner appears and surrenders before the Court concerned on or before 10.08.2023 and files an appropriate application for bail alongwith receipt of abovesaid costs, the Court concerned is directed to admit him to bail subject to its satisfaction and proceed with the trial in accordance with law. Till 10.08.2023, petitioner will have protection from arrest .

14. Needless to say that in case the petitioner fails to comply with the abovesaid direction, he will have no benefit of above said protection granted by this Court and the order dated 14.07.2022 (Annexure P-5) alongwith subsequent proceedings, would come in force.

July 27, 2023

Harish

**(VIKAS SURI)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No