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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-39636-2023 (O&M)

Date of decision: 23.08.2023

Balwinder Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Vikas Gupta, Advocate for petitioner.

Mr. Dhruv Dayal, Additional A.G., Punjab.

ARUN MONGA, J. (ORAL)

The instant petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of FIR No.290 dated 11.09.2019 (Annexure P-3), registered under Section 174-A of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station Sadar Tarn Taran, District Tarn Taran and all consequential proceedings arising there from out of said FIR and quashing of order dated 12.06.2019 (Annexure P-2) passed by learned Chief Judicial Magistrate, Tarn Taran whereby petitioner was declared a proclaimed person.

2. Succinct facts first, as pleaded in the petition;

2.1. Present petitioner availed loan from the Tarn Taran Primary Co-operative Agriculture Development Bank Ltd, Tarn Taran (for short 'Bank') regarding which he issued few security cheques. On account of delay in loan payments, the aforesaid bank presented cheque bearing no. 083611 dated 19.12.2017 for an amount of Rs.1,47,680/- which was dishonoured on account of 'funds insufficient and dormant account' vide memo dated 20.12.2017.

2.2 Bank filed a criminal complaint under Section 138 of Negotiable Instruments Act against the present petitioner. Though the aforesaid criminal complaint was filed by the aforesaid bank against the present petitioner, but the petitioner was not aware about the pendency of aforesaid criminal complaint due to which neither the

petitioner could appear before the Id. Trial Court nor engaged any counsel on his behalf. Ultimately, the present petitioner was declared as a proclaimed offender vide order dated 12.06.2019 (Annexure P-2), passed by Id. Chief Judicial Magistrate, Tarn Taran. Thereafter on the directions of Id. Trial court, FIR No. 290 dated 11.09.2019 (Annexure P-3) U/s 174-A IPC, 1860 was registered at Police Station Sadar Tarn Taran against the present petitioner.

2.3 Petitioner approached the bank and settled the loan account upon which the bank suffered a statement before Id. Trial Court not to continue with the complaint. Accordingly, the complaint filed by the bank under Section 138 of the Negotiable Instruments Act against the present petitioner was dismissed as withdrawn and the present petitioner was acquitted of charges framed against him. Bank also issued a certificate dated 09.06.2023 (Annexure P-5) stating that loan account of the present petitioner has been paid in full and the said loan account has been closed by the bank.

3. Learned counsel for the petitioner submits that FIR under Section 174-A IPC was registered against the petitioner. He further contends that matter stands settled as entire loan amount has been paid to the bank. Learned counsel for petitioner further urges that impugned order dated 12.06.2019 (Annexure P-2) passed by learned Chief Judicial Magistrate, Tarn Taran while declaring petitioner as a proclaimed person was passed without following the proper procedure prescribed under Sections 82 and 83 of the Code of Criminal Procedure, 1973. Further argues that no useful purpose would be served by keeping the present proceedings pending.

4. Learned counsel for the petitioner refers to copy of order dated 06.02.2020 (Annexure P-4) to contend that on the statement of learned counsel for the complainant, main complaint under Section 138 of the Negotiable Instruments Act, 1881 was dismissed as withdrawn and petitioner was acquitted of the charges framed against him.

5. Notice of motion.

6. On advance service of copy of petition, learned State counsel appears and accepts notice. He on instructions from ASI Kuldeep Singh, opposes the petition and submits that order declaring petitioner as a proclaimed person has rightly been passed.

He further submits that the offence under Section 174A IPC is independent of the main case.

7. Arguments heard.

7.1 Vide order dated 12.06.2019 (Annexure P-2) passed by learned Chief Judicial Magistrate, Tarn Taran, recorded its satisfaction that the accused-petitioner had absconded, declared him proclaimed offenders and directed that intimation be sent to the concerned police station to initiate proceeding against them under section 174-A of IPC. FIR No.290 dated 11.09.2019 (Annexure P-3) was thereupon registered at Police Station Sadar, Tarn Taran, District Tarn Taran, stating that the Court had declared the petitioner a proclaimed offender. 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 Complaint under Section 138 of Negotiable Instruments 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 12.06.2019 (Annexure P-2) passed by learned Chief Judicial Magistrate, Tarn Taran, declaring the petitioner a proclaimed offender

was/is not legal. The said order is the basis of the registration of the FIR under section 174A IPC against the petitioner and is, therefore, fatal to the FIR in question.

7.4 Moreover, petitioner herein has already been acquitted by the trial Court vide order dated 06.02.2020 (Annexure P-4). Present proceedings under section 174-A IPC against the petitioner is consequential to the proclamation under section 82 Cr.P.C issued in the proceedings of the complaint under Section 138 of Negotiable Instruments Act.

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 FIR No.290 dated 11.09.2019 (Annexure P-3), registered under Section 174-A of the Indian Penal Code, 1860, at Police Station, Sadar Tarn Taran, District Tarn Taran, alongwith all consequential proceedings arising there from against the petitioner, is quashed. Needless to add that order dated 12.06.2019 (Annexure P-2) passed by learned Chief Judicial Magistrate, Tarn Taran, whereby petitioner was declared a proclaimed person, also stands quashed.

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

(ARUN MONGA)
JUDGE

23.08.2023
Harish Kumar

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