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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42294-2023 (O&M)

Date of decision: 28.08.2023

Varinderpal Singh

....Petitioner

versus

State of Punjab

....Respondent

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

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

ARUN MONGA, J. (ORAL)

Present petition has been filed under section 482 Code of Criminal Procedure for quashing of FIR No.14, dated 09.03.2012, registered under Section 174-A of the IPC, at Police Station City Ahmedgarh, District Sangrur (AnnexureP-3) and all subsequent proceedings emanating therefrom.

2. Notice of motion.

3. On advance service of copy of petition, learned State counsel appears and accepts notice.

4. Learned counsel for the petitioner contends that vide order dated 26.11.2011 the petitioner was declared as a proclaimed offender and upon challenging the said order before this Court in CRM-M-14448-2015 vide order dated 06.05.2015, petitioner was directed to surrender before the trial Court.

4.1. He further submits that in compliance of the aforesaid order the petitioner surrendered before the trial Court on 12.05.2015 and was admitted to bail vide order Annexure P-4. During the trial all the prosecution witnesses turned hostile and the petitioner was consequently acquitted by the learned Sub Divisional Judicial Magistrate, Malerkotla, in the FIR No.126, dated 26.08.2007 (the FIR number has wrongly been mentioned as 156 dated 19.11.2009, which was rectified vide order dated 15.07.2003

Annexure P-6 by that Court).He further contends that no useful purpose would be served by keeping the present proceedings pending.

5. Learned State counsel opposes the prayer made and submits that order declaring petitioner as a proclaimed offender has rightly been passed. He further submits that the offence under Section 174A IPC is independent of the main case.

6. Arguments heard.

6.1 Vide order dated 26.11.2011(Annexure P-2) passed by the learned Judicial Magistrate^{1st} Class, Malerkotla, recorded its satisfaction that the accused-petitioner and co-accused Gurpreet Singh had absconded, declared them 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.14 dated 09.03.2020(Annexure P-3) was thereupon registered at Police Station City Ahmedgarh, District Sangrur, 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.

6.2 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.

6.3 The FIR against the petitioner under Sections 341, 323, 324, 326, 148 read with Section 149 of the IPC 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 26.11.2011(Annexure P-2) passed by the learned Judicial Magistrate1stClass, Malerkotla, 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.

6.4 Moreover, in case FIR no.126 dated 26.08.2007, petitioner herein has already been acquitted by the trial Court vide order dated 20.11.2015 (Annexure P-5). 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 said FIR.

7. 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.

8. Accordingly FIR No.14, dated 09.03.2012 (Annexure P-3), registered under Section 174-A of the IPC, at Police Station City Ahmedgarh, District Sangrur,alongwith all consequential proceedings arising therefrom against the petitioner, is quashed.

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

(ARUN MONGA)
JUDGE

28.08.2023
Harish/Jyoti

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