

S. No.124

2024:PHHC:032161

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

CRM-M-271 of 2024 (O&M)

Date of Decision:06.03.2024

Harwinder Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Siddharth Gupta, Advocate for the petitioner.

DEEPAK GUPTA, J. (Oral)

CRM No.8226 of 2024

This is an application to place on record copies of the zimni orders passed by the trial Court right from 01.12.2017 to 22.07.2019 in main complaint case i.e. COMA No.399 of 2017 (file No.240) dated 01.12.2017 titled as “The Bathinda Central Co-operative Bank Limited Vs. Harwinder Singh” as Annexures A.1 to A.11.

Application is allowed. Annexures A.1 to A.11 are taken on record.

CRM-M-271 of 2024

By way of present petition filed under Section 482 Cr.P.C., petitioner prays for quashing FIR No.0104, dated 26.08.2019 registered under Section 174-A IPC at Police Station Phool, District Bathinda (Punjab), along with consequential proceedings arising therefrom, in criminal complaint bearing No.COMA No.399 of 2017 (file No.240) dated 01.12.2017 titled as “The Bathinda Central Co-operative Bank Limited Vs. Harwinder Singh.

With the help of zimni orders, Annexures A.1 to A.11, as passed by the trial Court, learned counsel contends that provisions of Section 82 Cr.P.C were

not followed strictly and, therefore, the order declaring the petitioner as Proclaimed Person cannot be sustained in the eyes of law.

Heard.

It is revealed that complaint was filed on 01.12.2017. The summoning order under Section 138 of the NI Act was issued on 16.04.2018 and the petitioner, who is an accused in the main complaint case, was directed to be summoned for 06.06.2018 and then for 10.08.2018. As per order dated 10.08.2018, notice issued to the accused- petitioner was received back duly served but as he did not appear, so bailable warrants were issued against him for 08.10.2018. As per order dated 08.10.2018, said bailable warrants were received back duly served but still the petitioner did not appear, compelling the Court to issue Warrants of Arrest against him and then proclamation under Section 82 Cr.P.C. However, it is also noticed by this Court that proclamation was directed to be issued vide order dated 28.01.2019 for 10.04.2019. As the same was received back unexecuted, therefore, fresh proclamation was issued for 10.05.2019. The proclamation was received back duly executed on 10.05.2019 but as the Executing Constable did not appear on that date, so matter was adjourned for 22.07.2019 and then after recording the statement of the Executing Constable, the petitioner was declared Proclaimed Person vide impugned order dated 22.07.2019.

Learned counsel for the petitioner is right in contending that there was no proclamation for 22.07.2019 on which date, the petitioner was declared Proclaimed Person, whereas the petitioner was not declared Proclaimed Person on 10.05.2019 for which date, the proclamation had been earlier issued.

Learned State Counsel could not refute the afore-said contentions which are based upon the record of the trial Court.

In view of the afore-said circumstances, it is quite clear that impugned order dated 22.07.2019 (Annexure A.10) is in utter violation of Section 82 Cr.P.C, therefore, said order cannot be sustained in the eyes of law. The said order is quashed and consequent thereto, FIR No.0104, dated 26.08.2019 registered under Section 174-A IPC at Police Station Phool, District Bathinda (Punjab), is hereby quashed.

At the same time, having regard to the conduct of the petitioner, inasmuchas, despite receiving summons on 10.08.2018 and then theailable warrants on 08.10.2018, he had not made appearance before the Court, this petition is accepted subject to costs of ₹10,000/- to be deposited by petitioner with Member Secretary, Punjab State Legal Services Authority, Mohali.

March 06, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No