

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No. 2099 of 2024
Date of Decision: 24.01.2024

Mukesh Singla and Another ...Petitioners

Versus

State of Haryana and Others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. M.D. Khan, Advocate
for the petitioners.

Ms. Shubhra Singh, Addl. A.G. Haryana
(Through VC)

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
116	23.02.2013	Nuh, District Nuh	420, 467, 468,471, 201, 120-B, IPC and 7, 13(1)(d) of PC Act, 1988

1. Challenging the order of proclamation on being declared as a proclaimed offender, the petitioner, a shopkeeper, has come up before this court under section 482 of the Code of Criminal Procedure, 1973 (CrPC).
2. Counsel appearing for the State and the private respondents have strenuously opposed this petition, including the limited relief as confined by the petitioner.
3. In the above captioned FIR, initially seven persons were prosecuted. In contrast, the petitioner’s name was kept in column No.2 at the time of filing of the final report vide which it was explicitly mentioned in the note that Salim, son of Shaukat, the petitioner-Mukesh son of Ram Chander, and Shamim, son of Hamdulla, were not found involved by the concerned DySP. As such, they were not prosecuted; however, an investigation was pending against them. Later, vide judgment dated 28.03.2017; the trial Court acquitted all the accused who were prosecuted.

4. Before the other persons were acquitted, the prosecutor concluded the investigation against the other three persons who were initially declared innocent and also launched prosecution against them and one more person. Subsequently, they were summoned, that could not be served on the petitioner. Later, to secure the petitioner's presence, the Chief Judicial Magistrate [CJM] issuedailable and nonailable warrants, which failed. Later, the concerned CJM initiated proceedings under Section 82 of the CrPC to declare 05 persons, i.e., Almudeen, Samim, Mohd. Hussain, Sahun, and Mukesh and vide order dated 15.04.2014, the petitioner was declared Proclaimed offender.

5. Aggrieved by the order dated 15.04.2014, the petitioner has come up before this Court by filing the present petition under section 482 CrPC. The petitioner's first ground is that although he is a shopkeeper, as such, he had a permanent place for his business; the police officials intentionally did not serve him. His second ground is that initially, he was declared innocent and he remained under the impression and believed that he had been absolved from all charges. Still, later, when further investigation was conducted, the petitioner and 04 more persons were found involved, and a separate police report was filed. He was not aware of the same. His next submission is that in 2017, when other people were acquitted, the petitioner's initial information of being declared innocent converted into the belief that he was rightly not prosecuted, and as such, he was sure that the matter had been closed. The petitioner further submits that one of the reasons for non-service is that his complete name and address were not mentioned in the FIR or the proclamation order. Due to the incomplete address the procedure prescribed in Section 82, CrPC was not followed. He submits that there was no affixation at the place where the petitioner was residing or he was carrying out his business, and in the absence of affixation, he did not come to know about the proceedings initiated against him under Section 82 CrPC. Concisely, the petitioner's case is that the moment he learned about the proceedings initiated under Section 82 CrPC, he immediately came to this Court and undertook to appear before the trial Court and to face the trial. He clarifies that his non-appearance was not intentional but was solely for the reason he was not at all aware that a supplementary challan had been filed against him in which he has been arraigned as an accused even though initially a senior level Officer of the rank of DySP had absolved him and did not find evidence against him and had not launched prosecution against him.

6. The State's counsel could not refute these submissions but stated that initially DySP did not find evidence against the petitioner and as such he was not prosecuted.

7. An analysis of the submissions and the petition would lead to the following outcome. It remains undisputed that when the petitioner got to know about his being declared a proclaimed offender, he took a legal remedy and came up before this Court. It also remains undisputed that it never happened that police officials had caught him, or the petitioner had tried to run away to avoid appearance in the Court. It also remains undisputed that the petitioner is a shopkeeper, and, as such, he would have a permanent place of business; despite this, the police could not serve him. In such a situation, the petitioner has proved his case by preponderance of probabilities and has prima facie established that his non-appearance was beyond his control. The petitioner has also proved by a preponderance of probability that he might not be aware of the issuance of the proclamation primarily because he was initially not involved by the DySP. Although there is a massive delay in proclamation proceedings, which have been pending for a decade, the petitioner on his own came before this Court, undertaking to attend the trial, and it is not the police who have been able to catch him.

8. The petitioner not only seeks to quash the proclamation order but also the FIR registered under Section 174-A IPC. However, this Court is adjudicating only the proclamation order and let the petitioner establish his intention to appear, and once he has put in an appearance, then it shall be permissible for him to file said petition for quashing of proceedings under Section 174-A IPC. Let him do that because the criminal justice system must not hamper and suffer because of the petitioner. Given the above, this Court is confining the adjudication of this matter to the extent mentioned before, reserving the liberty to the petitioner as mentioned above.

9. The primary object of the service is to secure the accused's presence at trial. The petitioner approached this court independently, establishing the bonafide at this stage. Without commenting on the case's merits, and in the facts and circumstances peculiar to this case, and also for the reasons mentioned above, the ends of justice would meet if the impugned proclamation order is quashed qua the petitioner. Thus, exercising the inherent powers under section 482 CrPC, it would be appropriate to grant the following limited relief to the petitioner, subject to the compliance of the conditions mentioned in this order.

10. The State's counsel submitted that if this Court is granting any concession to the petitioner, it must be subject to some reprimand. The petitioner's counsel declared that if this court imposes reasonable and affordable costs, the petitioner shall deposit the same.

11. Given above, by the next date, the petitioner shall deposit a sum of rupees five thousand each in the following accounts and hand over its receipt to the concerned court(s).

Bar Association, Nuh, Haryana.

AND

Account Name – “HARYANA POLICE WELFARE FUND”

Account No. - 50100097073807

Account Type - Saving Account

Bank Name - HDFC Bank, Sector-8, Panchkula

IFSC Code - HDFC000108”

12. The petitioner is directed to surrender before the concerned court **on or before 31-01-2024**. On or before this date, if the petitioner files bail applications before the concerned Court(s) of the concerned district, the petitioner’s arrest shall remain stayed till the disposal of the said bail(s). Given the undisputed fact of the acquittal of the accused who were sent to the trial, this court is requesting the concerned trial court to grant interim bail(s) on the petitioner’s surrendering before the majesty of the concerned Court(s). Given this, on appearance, the concerned Court(s), where the petitioner files the bail applications, shall release the petitioner on interim bail on the same day, subject to furnishing bail by imposing reasonable conditions that may be deemed appropriate in the background of the accused’s conduct. The petitioner is directed to appear on each date before the trial court and not to delay it.

13. There shall be a stay of the petitioner's arrest in the case mentioned above and the resultant FIR under section 174-A of IPC until his surrender, i.e., latest by 31-01-2024. It is clarified that if the petitioner appears before the concerned court, then all warrants issued by the concerned court against the petitioner in the matter mentioned above shall stand recalled and canceled. It is clarified that if the petitioner fails to appear before the concerned court within the time limit mentioned in this order, then this order shall be recalled automatically under section 362, read with 482 CrPC, without any further reference to this court.

14. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

15. *There would be no need for a certified copy of this order, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition partly allowed to the extent mentioned above. All pending applications, if any, stand disposed. Liberty reserved to raise the given-up relief(s) in the subsequent petition(s), if the need so arises.

(ANOOP CHITKARA)
JUDGE

24-01-2024
Sonia Puri

Whether speaking/reasoned: Yes
Whether reportable: **YES.**