

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-4004-2024 (O&M)
Date of order: 24.01.2024

Mohd. Shamim

...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

FIR No.	Dated	Police Station	Sections
59	5.2.2023	Nuh, District Nuh	174A IPC.

1. Challenging the order of proclamation on being declared as a proclaimed offender, the petitioner, an Advocate, has come up before this court under section 482 of the Code of Criminal Procedure, 1973 (CrPC).
2. The petitioner, who was initially named in a police report under Section 173 CrPC at serial No.2 with the name ‘Sameem,’ resident of Dihana, P.S. Nuh, District Mewat in FIR No.116 dated 23.2.2013 under Section 467, 468, 471, 120B IPC, Police Station Nuh (Annexure P-2) and claims to be unaware of the said FIR and consequent filing of the police report, after that he was declared as proclaimed offender, is challenging all these proceedings/order, through the present petition filed under Section 482 CrPC.

3. Counsel appearing for the State and the private respondents have strenuously opposed this petition, including the limited relief as confined by the petitioner. Given the nature of the order this Court proposes to pass, no reply from the State is necessary.

4. 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.

5. Before the other persons were acquitted, the prosecutor concluded the investigation against the other three persons initially declared innocent and launched prosecution against them and one more person. Subsequently, they were summoned, which could not be served on the petitioner. Initially, the petitioner was summoned on 14.11.2013. Still, he could not be served, and later on, the summons was again sent to him on 4.12.2013, 6.2.2014, and 26.2.2014 with the name 'Sameem son of Hamdulla, Caste Mew, resident of Jehtana, Police Station Punhana.' Still, he was residing at Lakhnaka Road, Hathin, District Palwal. Later, to secure the petitioner's presence, the Chief Judicial Magistrate [CJM] issued bailable and non bailable 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. Although in the Court orders sheet, the petitioner was referred to along with his father's name, in the summons, his name was not mentioned. A perusal of the orders sheet points out that no date was mentioned in so many orders, and therefore, it is difficult to point out on what date summons were issued. However, the order dated 28.4.2014 points out that since none of the seven accused could be served, proceedings under Section 82 CrPC were initiated against all of them. In 15.4.2014, five accused were declared as proclaimed offenders, whereas the names of the accused, Salim (petitioner) and Samay, were not mentioned in the proclamation order. It was mentioned that due to clerical error, they were not declared as proclaimed offenders, though vide order dated 28.4.2014, CJM Mewat rectified the clerical mistake and declared Salim and Samay as proclaimed offenders.

6. Aggrieved by the orders dated 15.04.2014 and 28.04.2014, 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 an Advocate, 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.

7. 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.

8. An analysis of the submissions and the petition would lead to the following outcome.

9. 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 remains undisputed that police officials never caught him or that the petitioner tried to run away to avoid an appearance in court. It also remains undisputed that the petitioner is an Advocate, and, as such, he would have a permanent place of availability; despite this, the police could not serve him. A perusal of the non-bailable warrants points out that the petitioner's complete name was not mentioned in the summons. Because of this, the concerned court did not even declare the petitioner as a proclaimed offender and later on, vide order dated 28.4.2014, the petitioner was declared a proclaimed offender, stating that his non-declaration was a clerical mistake. Section 82

CrPC is a stringent provision, and its compliance has to be followed in letter and spirit. Once it was clear that the petitioner was not residing at the given address, nor his complete name was mentioned, and even his father's name was also not mentioned, it was difficult to believe that he was aware of the issuance of summons, bailable/non-bailable warrants, and subsequent proceedings. In such a situation, the petitioner has proved his case by a 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.

10. 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 fresh 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.

11. 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.

12. The petitioner is directed to surrender before the concerned court **on or before 09-02-2024**. 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 09-02-2024. 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.**