

SURINDER SINGH @ SURENDER

.....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. R.S. Dhull, Advocate for the petitioner.
Mr. Chetan Sharma, DAG, Haryana.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 482 CrPC, prayer has been made for setting aside the order dated 08.08.2017 passed by the Court of learned Judicial Magistrate First Class, Jind whereby, the petitioner was declared as proclaimed person followed by registration of FIR No.136 under Section 174-A of IPC dated 17.10.2017 at P.S. Civil Lines Jind.

2. Having been arrayed as an accused in a complaint filed under Section 138 of Negotiable Instruments Act, 1881 followed by his summoning, the petitioner was granted concession of regular bail by the trial Court. Initially, the petitioner continued to appear before the trial Court, however on account of his non-appearance, the proclamation under Section 82 of CrPC was issued against him by the trial Court vide order dated 09.06.2017 for 08.08.2017 being the date of appearance. The statement of the executant-police officer as regards the proclamation having been effected on 15.06.2017 was recorded by the trial Court on 08.08.2017 followed by declaring the petitioner as proclaimed person vide order dated 08.08.2017.

3. Impugning the aforesaid order, learned counsel for the petitioner submits that the proceedings under Section 82 of CrPC have not been carried out against the petitioner in accordance with the mandate laid down under the statutory provision as the proclamation was never read over in public place and thus, the impugned order is required to be set aside.

4. On the other hand, learned State counsel vehemently opposed the prayer made in the petition while submitting that the petitioner despite having appeared before the trial Court and being conscious of pendency of the proceedings against him failed to continue to appear and thus, the impugned order warrants no interference.

5. It may be pointed out here at this stage that though, the complainant in the compliant under Section 138 of NI Act 1881 has been impleaded as respondent No.2 in the present petition, however, her presence is not required in these proceedings as the challenge is merely to the order passed by the trial Court whereby, the petitioner was declared as proclaimed person besides, the FIR registered thereupon under Section 174-A of IPC.

5. I have heard learned counsel for the parties and gone through the paper-book.

6. A perusal of report of executant-police officer which was recorded on 08.08.2017 shows that the proclamation under Section 82 of CrPC was never read over in public place as enjoined under Section 82(2)(i)(a) of CrPC and thus, the declaration of the petitioner as that of

proclaimed person was in utter violation of the mandate of statutory provision. The declaration of an individual as a proclaimed person/proclaimed offender as contemplated under Section 82 of CrPC directly interferes with the life and liberty, flowing from Article 21 of Constitution of India and thus, provisions of CrPC are mandatorily required to be complied with on all fours, the same having not been done in the present case as apparent from the records, the present petition is allowed and impugned order dated 08.08.2017 passed by Judicial Magistrate First Class, Jind as well as FIR No. 136 dated 17.10.2017 are hereby quashed.

7. The petitioner shall surrender himself before the trial Court within a period of one week from today and furnish his bail bonds/surety bonds subject to satisfaction of the Court concerned. The aforesaid order shall however be subject to payment of costs of Rs.10,000/- to be deposited with District Legal Services Authority, Jind.

03.04.2024
Tejwinder

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No