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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-11528-2024
Date of decision :16.04.2024

Kulwant Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present : Mr. Amit Arora, Advocate
for the petitioner.

Mr.Kewal Krishan, Addl.AG, Punjab.

HARKESH MANUJA.J. (ORAL)

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing order dated 28.11.2005 passed by Judicial Magistrate 1st Class, Taran Taran vide which the petitioner has been declared as proclaimed offender.
2. Briefly stating, the petitioner has been implicated in the present FIR No. 57 dated 18.05.2000, under Sections 323/324/148/149 IPC registered at Police Station Sarai Amanat Khan, District Tarn Taran, wherein challan was filed by the investigating agency on 11.06.2001 against the petitioner and charges were framed on 18.08.2001. The petitioner, on account of his absence before the trial Court, was declared as proclaimed offender vide order dated 28.11.2005.
3. Learned counsel for the petitioner submits that the declaration of the petitioner as proclaimed offender was in violation of Section 82 of the

Code of Criminal Procedure (Cr.P.C.) as no steps under Section 105 of the Cr.P.C. were taken so as to serve the petitioner who was away to Hongkong/Japan at the relevant point of time and the proceedings carried out against him were vitiated. He also points out that during trial, on account of the prosecution witnesses not supporting the case, the other co-accused have been acquitted vide judgment dated 01.11.2008. Further he also submits that the petitioner is ready to surrender himself before the trial Court and face proceedings and also to pay a reasonable cost.

4. On the other hand, prayer made by the petitioner has been opposed by learned State counsel by submitting that the petitioner being conscious of the fact that proceedings were going on against him deliberately chose not to appear before the trial Court and went abroad. He further submits that despite the fact that the petitioner came back to India on 09.11.2008, he never chose to submit himself to the trial Court for a long period of more than 15 years and thus the impugned order warrants no interference.

5. I have heard learned counsel for the parties and gone through the record with their able assistance.

6. I find substance in the submissions made on behalf of learned counsel for the petitioner. In the present case the proclamation under Section 82 of the Cr.P.C. against the petitioner was issued by the trial Court on 18.02.2005 for 01.06.2005. The same having not been effected, fresh proclamation was issued on 21.09.2005 for 28.11.2005 which came to be effected on 28.10.2005. and then on 28.11.2005 he was declared as proclaimed offender. Upon comparison of the proclamation to the passport entries of the petitioner which have been annexed as Annexure P-4, it can be

traced out that the petitioner left the country on 06.02.2002 for Hongkong and came back to Delhi on 09.11.2008 and as such the proclamation effected under Section 82 of the Cr.P.C. qua him on 28.11.2005 was meaningless as he was never afforded a chance to surrender himself before the court concerned in pursuance to any valid proclamation in terms of Section 82 of the Cr.P.C. read with Section 105 thereof. Moreover, the other co-accused have already been acquitted by the trial Court vide order dated 01.11.2008 on account of prosecution witnesses not supporting its case. Further more, the petitioner volunteers to furnish medical equipments in the name of General Hospital, at Tarn Taran within a period of 10 days from today so as to serve public cause.

7. As a cumulative analysis of the discussion hereinabove, the present petition is allowed and impugned order dated 28.11.2005 declaring the petitioner as proclaimed offender including the consequential proceedings arising therefrom, is set aside.

(HARKESH MANUJA)
JUDGE

16.04.2024

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Whether speaking/reasoned ? Yes/No

Whether Reportable ? Yes/No