

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.13654 of 2024
Date of Decision: 01.05.2024

FATEH CHANDPetitioner

Vs

SATYAWAN AND ANOTHERRespondents

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. B.S. Mamli, Advocate
for the petitioner.

Mr. Deepak Kumar, Advocate
For respondent No.1.

Mr. Gurmeet Singh, Asstt. A.G., Haryana
for respondent No.2.

HARKESH MANUJA, J. (Oral)

[1]. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of order dated 19.04.2023 passed by the Judicial Magistrate Ist Class, Fatehabad vide which the petitioner was declared as proclaimed person as well as quashing of consequential FIR No.0169 dated 06.05.2023 registered under Section 174-A IPC at Police Station Bhuna, District Fatehabad, Haryana.

[2]. Briefly stating, petitioner having been arrayed as an accused in a complaint filed under Section 138 of the Negotiable Instruments Act at the instance of respondent No.1/complainant he was summoned by the Trial Court vide order dated 19.02.2020. On account of non-appearance of the petitioner, he was declared as proclaimed person vide order dated 19.04.2023 passed by the

Judicial Magistrate Ist Class, Fatehabad, followed by registration of FIR No.0169 dated 06.05.2023 under Section 174-A IPC against him.

[3]. Impugning the aforementioned order dated 19.04.2023 as well as FIR No.0169 dated 06.05.2023, learned counsel for the petitioner submits that the declaration of the petitioner as proclaimed person was not in conformity with the mandate of Section 82 Cr.P.C., besides it, in terms of settlement having been arrived at between the parties, now the complaint stands withdrawn at the instance of respondent No.1/complainant and, thus, continuation of proceedings in pursuance of impugned order as well as the FIR in question would amount to abuse of process of law. Moreover, learned counsel for the petitioner on instructions from his client, submit that he volunteers to serve public cause by providing one stretcher and one wheelchair of superior quality to Civil Hospital, Fatehabad.

[4]. Learned State counsel vehemently opposes the prayer made on behalf of the petitioner while submitting that the petitioner despite having knowledge of pendency of proceedings under Section 138 of the N.I. Act as well as summoning order, deliberately chose not to appear before the Trial Court resulting into his declaration as proclaimed person followed by registration of FIR against him and, thus, the impugned order as well as the FIR do not warrant any interference.

[5]. On the other hand, learned counsel representing respondent No.1/complainant admits the factum of settlement arrived at between the parties and states that the complaint filed at his instance stand withdrawn vide order dated 09.03.2024 passed by the Presiding Officer, National Lok Adalat-cum-JMIC, Fatehabad.

[6]. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

[7]. In the present case, the proclamation under Section 82 Cr.P.C., was effected on 15.03.2023 and in his statement recorded before the Trial Court, the executant police officer nowhere records that the said proclamation was ever read out publically in terms of 82(2)(i)(a) Cr.P.C. The translated version of statement made by the executant police officer reads as under:-

“Sir,

For affecting service of proclamation notice, I, Mahender Singh, EHC went at given address on 15-03-23 and inquired about Fateh Chand s/o Mohan Lal, but found his sister Pinky and mother, who told that Fateh Chand does not reside at the house. He lives at some unknown place. We do not know about his whereabouts, but his number is 81305-74915. I Mahender Singh EHC, asked his address but they did not say anything, only said that he will appears before the honorable court. Further, after making enquiries there, munadi was done, a copy of which is pasted on the given address, second copy is pasted on the common wall outside in a public place and the third copy is pasted on the notice board of the Honorable Court. Original copy along with the reports is presented.”

*EHC Mahender Singh
Summon Staff
8901085820
At 15-03-23”*

[8]. In view of above, once the declaration of petitioner as proclaimed person was not in consonance with the mandate of Section 82 Cr.P.C., the impugned order becomes unsustainable in law. Moreover, the parties have already entered into a settlement and the complaint filed at the instance of respondent No.1/complainant stands withdrawn in terms of order dated 09.03.2024 passed by the Presiding Officer, National Lok Adalat-cum-JMIC, Fatehabad.

[9]. In view of discussion made hereinabove, the present petition is allowed, subject to providing one stretcher and one wheelchair of superior quality to Civil Hospital, Fatehabad, within a period of two weeks from today as volunteered by the petitioner against due receipt issued by the concerned Civil Surgeon, who shall prepare an inventory in this regard for its regular inspection by the Director concerned. A copy of the receipt shall also placed before the concerned Trial Court. Consequently, the order dated 19.04.2023 passed by the Judicial Magistrate Ist Class, Fatehabad declaring the petitioner as proclaimed person is set aside and as a consequence thereof, the FIR No.0169 dated 06.05.2023 registered under Section 174-A IPC at Police Station Bhuna, District Fatehabad along with all consequential proceedings arising therefrom is also quashed.

May 01, 2024
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No