

BHUPINDER SINGH ALIAS BHINDA

.....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. P.S. Ahluwalia, Advocate and
Mr. Jaiveer Singh, Advocate for the petitioner.

Mr. Kewal Singh, Addl. A.G. Punjab.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 482 CrPC, prayer has been made for setting aside the order dated 09.10.2014 passed by the trial Court whereby, the petitioner was declared as proclaimed offender besides a challenge being made to the further proceedings being carried out in consonance with Section 299 of CrPC.

2. Briefly stating, FIR No.98 dated 02.05.2013 under Sections 307, 458, 323, 34 and 201 of IPC & Sections 25/54/59 of the Arms Act at Police Station Sadar Dhuri, District Sangrur was registered against unknown person, at the instance of maternal uncle of the wife of the petitioner alleging an assault on him along with his son. Later, on 03.05.2013, the petitioner was nominated as an accused in the aforementioned FIR. Being oblivious of the fact of his implication in the aforesaid FIR, petitioner left for Canada on 06.05.2013 and behind his back, on account of his non-appearance before the Investigating Agency as well as the Court concerned, he was declared as proclaimed offender vide order dated 09.10.2014 followed by proceedings being carried out against him in terms of Section 299 of CrPC.

3. Learned counsel for the petitioner submits that the proceedings under Section 82 CrPC read with Section 105 CrPC were concluded against the petitioner in violation of mandatory procedure laid down therein besides, he having already appeared before the trial Court and being released on regular bail vide order dated 07.03.2024, no further steps were required to be taken against him in accordance with Section 299 of CrPC.

4. On the other hand, learned State counsel vehemently opposes the prayer made herein while submitting that petitioner despite being conscious of his implication in the aforementioned FIR, deliberately chose to avoid the proceedings and thus, was rightly declared as proclaimed offender and as such the proceedings being carried out against him warrants no interference.

5. At this stage it may be relevant to point out here that the challenge in the present petition is to the order dated 09.10.2014 whereby, the petitioner was declared as proclaimed offender as well as the consequential proceedings thereof and thus at this stage, notice upon the complainant-respondent No.2 may not be necessary as the dispute primarily relates between the petitioner and the State besides it, any notice at this stage to the complainant would delay the proceedings in the trial as well as burden him with unnecessary and uncalled for financial burden.

6. I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made by learned counsel for the petitioner.

7. In the present case, a perusal of final report filed under Section 173 CrPC itself shows that the Investigating Agency was deeply conscious of the fact that petitioner was citizen of Canada and thus, before filing the final report, efforts should have been made to serve him through the process prescribed under Section 105 CrPC. Despite there being a specific mention to the effect that petitioner was away to Canada, no such procedure as contemplated under Section 105 CrPC was ever adopted by the trial Court and thus, the proceedings carried out against the petitioner while declaring him as proclaimed offender were wholly vitiated. Moreover, there is an apparent non-compliance of Section 82 (2) (i) (a) of CrPC as in this regard order dated 10.09.2014 passed by the trial Court shows that proclamation issued under Section 82 CrPC was never read over in public place.

8. Moreover, proclamation in the present case was ordered on 05.08.2014 for 10.09.2014 being the date of appearance. As per the records, the proclamation was effected on 03.09.2014 for 10.09.2014 which clearly fell short of statutory period of 30 days as contemplated under Section 82 of CrPC for enabling an individual to put in appearance in pursuance to the said proclamation. Though, the trial Court on 10.09.2014 being conscious of the aforesaid fact adjourned the hearing for 09.10.2014, however, for the said date i.e. 09.10.2014, there was no proclamation ever issued by the trial Court in terms of Section 82 of CrPC thus, the declaration of petitioner as proclaimed offender on 09.10.2014 was totally illegal.

9. In view of the aforesaid discussion, the proceedings under Section 82 of CrPC being ordered against the petitioner in violation of the mandatory procedure laid down under Section 82 CrPC read with Section 105 CrPC which regulate the liberty of an individual, flowing from Article 21 of Constitution of India was thus inviolable. Accordingly, order dated 09.10.2014 passed by the trial Court is set aside including the consequential proceedings carried out under Section 299 CrPC.
10. The aforesaid order shall however, be subject to deposit of costs of Rs.25,000/- with Poor Patients’ Welfare Fund, PGIMER, Chandigarh.

09.04.2024
Tejwinder

(HARKESH MANUJA)
JUDGE

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