

132

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-19325-2024

Date of decision: 23.04.2024

Sunil Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Aditya Sanghi, Advocate for the petitioner.

Mr. Neeraj Sheoran, DAG, Haryana.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner seeking quashing of order dated 08.07.2016 Annexure P-1 passed by the Court of Chief Judicial Magistrate, Sirsa whereby the petitioner has been declared as proclaimed person in criminal case having FIR No.362 dated 16.05.2015 under Section 15/27A/25 of NDPS Act, Police Station Sirsa City District Sirsa.

2. The brief facts of the case are that police received secret information on 16.05.2015 and then reached the disclosed place where one Bolero pickup was found lying abandoned and on checking of the said vehicle, 5 plastic bags each having 28 kg of poppy husk were recovered. During investigation, Sarwan, Rakesh and Ram Kishan @ Bhalu were arrested and they faced trial and finally acquitted vide judgment dated 17.09.2021 Annexure P-4.

3. The counsel for the petitioner submits that the FIR in this case was registered against unknown persons and that petitioner has nothing to do with the alleged recovery. It is further submitted that the petitioner was not in knowledge about registration of any such FIR as he was not named in the same. It is further submitted that he never received any notice/summons/warrants issued by any Court with regard to pendency of the aforesaid criminal case. It is further submitted that the accused who faced trial were acquitted on ground of non compliance of provisions of Sections 41, 42 and 52A of NDPS Act and the trial Court further held that the concerned investigating officers were not competent to investigate the matter as they were holding ORP rank of Assistant Sub Inspector and in this regard, the trial Court referred to judgment of Division Bench of this Court in ***Bikkar Singh Vs. State of Punjab 2006 (3) RCR (Criminal) 16***. Counsel for the petitioner further submits that in the given circumstances there are very bleak chances of conviction of the petitioner in the present case as he is similarly situated to the persons who were already acquitted vide judgment Annexure P-4. Counsel for the petitioner further submits that even otherwise the impugned order was not passed in accordance with the provisions of Section 82 Cr.P.C. So, prayer is made that the present petition be allowed and petitioner be allowed to appear before the trial Court to face trial.

4. The present petition is resisted by the State counsel who submits that proceedings under Section 82 Cr.P.C were conducted by the Court concerned and there is no illegality in the same. It is further submitted that the petitioner evaded his arrest and was finally declared as proclaimed

person vide impugned order Annexure P-1. It is further submitted that petitioner should surrender before the Court concerned to face trial. However, the State counsel has not disputed the fact that co-accused who faced trial were acquitted vide judgment dated 17.09.2021 Annexure P-4. It is further submitted that the present petition deserves to be dismissed.

5. I have considered the submissions made by counsel for the parties.

6. As per Annexure P-2, FIR in this case was registered against unknown persons and recovery of commercial quantity of poppy husk was effected from Bolero Pickup which was found parked. Later on Sarwan, Rakesh and Ram Kishan @ Bhalu along with petitioner and one Sahi Ram were nominated as accused. The police failed to arrest the petitioner while co-accused Sarwan, Rakesh and Ram Kishan @ Bhalu were arrested and they faced trial and were acquitted vide judgment dated 17.09.2021 Annexure P-4. The State counsel has admitted that State did not file any appeal against the said judgment. As per judgment Annexure P-4, it appears that trial Court while referring to decision of Division Bench of this Court in **Bikkar Singh's case** (supra) held that the police officials who investigated the case were not competent to do so, as they were not holding regular rank of Assistant Sub Inspector. In case, the petitioner is allowed to appear before the trial Court to face trial, he is also to be treated on parity with co-accused Sarwan, Rakesh and Ram Kishan @ Bhalu, as far as incompetency of the investigating officers is concerned. Further, as per counsel for petitioner, Sunil Kumar was not in knowledge about pendency of any such case as he was not named in the FIR.

7. The purpose of provision of Section 82 Cr.P.C is to procure the presence of accused to enable him to face trial. In the present case, it appears that petitioner is willing to surrender before the Court concerned, in order to face trial.
8. In the light of the above discussion, coupled with the fact that co-accused who faced trial are already acquitted vide judgment Annexure P-4, no purpose will be served by sustaining the impugned order and the same is hereby set aside with direction to the petitioner to surrender before the Court concerned within next 4 weeks. Needless to observe that nothing in this order shall be treated as expression of any opinion on merits of the case.
9. However, this order will be subject to payment of cost of Rs.3,000/- to be deposited by the petitioner with the District Legal Services Authority, concerned.

23.04.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No