

[256] IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-9145-2016  
Date of Decision : 07.02.2024

Kala alias Manjit Kumar ...Petitioner  
  
Versus  
  
Swaran Chand ....Respondent

Coram : HON'BLE MR. JUSTICE DEEPAK GUPTA  
  
Present : Mr. Arun Takhi, Advocate for the petitioner.  
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DEEPAK GUPTA, J. (ORAL)

[1] Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of impugned Criminal Complaint No.198/1 of 2010 dated 07.05.2007, registered under Sections 323, 324, 295-A, 120-B/34 IPC and to quash impugned summoning order dated 17.09.2008 and also to quash impugned order dated 07.02.2009 whereby the petitioner has been declared as proclaimed offender by the learned Addl. CJM, SBS Nagar, and all subsequent proceedings arising therefrom.

[2] It is contended that respondent-Swaran Chand along with his sons and 02 others had caused injuries to the mother of the petitioner and his married sister, namely Rajinder Kaur and Simar Kaur on 23.11.2006 on account of a land dispute, regarding which FIR No.229 dated 25.11.2006 under Sections 323, 324/34 IPC was registered at Police Station Balachaur, District SBS Nagar, against the respondent and his other family members.

[3] Although, later on, the respondent and others were acquitted vide judgment dated 08.04.2013 (Annexure P-2) but prior thereto, as a

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counter-blast to the aforesaid FIR, the respondent-Swaran Chand self suffered the injuries and filed a frivolous complaint so as to prosecute the petitioner, his parents and siblings under Sections 323, 324, 295-A and 120-B IPC in the Court of learned SDJM, Balachaur, District SBS Nagar. Copy of the complaint is Annexure P-2.

[4] Learned counsel further contends that the petitioner along with his family left for Australia on 08.09.2008, unaware of the fact of pendency of any complaint filed by the respondent. It is after the departure of the petitioner that the summoning order dated 17.09.2008 (Annexure P-4) was passed by the trial Court concerned. Learned counsel contends that petitioner never returned from Australia. Even the report on the summons/warrant of arrest was received to the effect that the petitioner was abroad, despite which the proclamation under Section 82 Cr.P.C. was effected in India itself and based thereon, the petitioner was declared proclaimed offender vide order dated 07.02.2009 (Annexure P-5).

[5] Learned counsel further contends that in the meantime, rest of the accused faced trial in the complaint case and all of them have been acquitted vide judgment dated 08.04.2013 (Annexure P-6).

[6] Learned counsel contends that in the aforesaid facts and circumstances, the impugned order whereby he was declared proclaimed offender, the complaint in question and summoning order be set aside

[7] Notice of this petition was issued to the respondent. Despite his service as per law, no body made appearance on behalf of the respondent so as to contest the petition.

[8] The summoning order in the complaint (Annexure P-3) was passed on 17.09.2008. Perusal of the endorsement of a VISA on the passport (Annexure P-1) of the petitioner reveals that he had arrived in Australia on 09.09.2008 i.e. prior to the summoning order.

[9] Learned counsel has also rightly drawn attention towards order dated 06.01.2009 (Annexure P-7) passed by the Court concerned, in which, it was observed that warrant of arrest against the petitioner had been received with the report that he had gone abroad. Despite the said report, no efforts appears to have been made so as to ask the complainant of the case-respondent to provide the correct address of the petitioner so as to serve him abroad, in accordance with law. By effecting the proclamation in India itself, the petitioner was declared proclaimed offender, which is *per se* illegal.

[10] Consequent to the aforesaid discussion, the impugned order dated 07.02.2009 whereby the petitioner was declared proclaimed offender, is hereby quashed.

[11] It is further revealed from the judgment dated 08.04.2013 *qua* the co-accused that all of them have been acquitted as the complainant of the case could not prove the allegations beyond doubt.

[12] Respondent is now not contesting the petition and so no purpose shall be served by asking the petitioner to appear before the trial Court so as to face trial in a complaint case.

[13] Consequent to the aforesaid discussion, criminal complaint No.198/1 of 2010 dated 07.05.2007, registered under Sections 323, 324, 295-A, 120-B/34 IPC and impugned summoning order dated 17.09.2008 and

impugned order dated 07.02.2009 whereby the petitioner has been declared as proclaimed offender by the learned Addl. CJM, SBS Nagar, are hereby quashed.

(DEEPAK GUPTA)  
JUDGE

07.02.2024  
'Rajneesh'

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