

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 25684 of 2024
Reserved on 20.08.2024
Pronounced on : 30.08.2024

Surinder Singh @ GadnuPetitioner

Vs.

State of U.T.and AnotherRespondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sudershan Thakur, Advocate
for the petitioner.

Mr. Manish Bansal, P.P., U.T., Chandigarh with
Mr. Shubham Mangla, Advocate
for U.T. Chandigarh.

Ms. Anju Sharma, Advocate
for respondent No.2-NCB.

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
144	20.07.2019	Sector-11, Chandigarh	174A IPC

1. Seeking the quashing of FIR captioned above and order dated 21-12-2017, Annexure P-2, on the basis of FIR registered, the accused has come up before this Court under Section 482 of the Code of Criminal Procedure, 1973 (CrPC).
2. The petitioner was arraigned as an accused in FIR No.49 dated 29.11.2016 under Sections 8, 20, 29 and 60 of NDPS Act, 1985, Police Station NCB, despite issuance of non bailable warrants presence of the petitioner could not be procured and the concerned court finally proceeded against the petitioner under section 82 of CrPC and declared the petitioner a proclaimed offender vide order dated 21.12.2017.
3. The petitioner wants to draw this court's attention to the fact that the absence was not willful and was due to factors beyond the petitioner’s control and has referred to para 4 of the petition, which reads as follows:

“4. That the petitioner was not even aware of his false implication in the abovementioned NDPS case, as the petitioner is a resident of district Kullu, Himachal Pradesh and doing

seasonal work of apple and vegetable and keep on moving from one place to another in district Kullu and Lahaul Spiti, Himachal Pradesh and as a result he was not in knowledge of this case and as a result on 21.12.2017 he was illegally declared PO without complying with the mandatory provisions of Cr.P.C.”

4. The State could not dispute the factual matrix at this stage.

5. A proclamation was issued because they attempted to serve him at an address where he did not reside at the relevant time. According to the petitioner, he was detained and held in custody, and after six months of custody in the main case, he was released on regular bail, when he came across with the registration of FIR captioned above.

6. I have heard counsel for the parties and gone through the record, and its analysis will lead to the following outcome:

7. A perusal of the order dated 16-11-2017, Annexure P-4, reads as follows:

“Proclamation issued against accused Surinder Singh received back duly executed on 14-11-2017 (cutting on the date from 13 to 14). None has appeared for accused Surinder Singh despite calls. The mandatory period of 30 days has not been elapsed. The appearance of accused Surinder Singh be awaited till 21-12-2017. Reply from office of N.C.B. regarding release of articles be also called for the date fixed.”

8. A perusal of the order dated 21-12-2017, Annexure P-2, reads as follows:

“Statement of Intelligence Officer, Rajinder Singh with regard to proclamation of accused Surinder Singh has been recorded. Proclamation against accused Surinder Singh was affected on 03-11-2017. More than 30 days period has already been expired, but neither accused Surinder Singh arrested nor he surrendered before the court. It is clear that accused Surinder Singh is evading the process intentionally. Accused Surinder Singh is declared proclaimed offender in this case. Necessary intimation be sent to the S.H.O. concerned for making entry in the relevant register. Adjourned to 16-01-2018, for arguments on charge.”

9. Thus, there is a significant contradiction in these orders. The order dated 16-11-2017 (P-4) mentions the date of execution of the proclamation as 14-11-2017 with specific mention of cutting from 13th to 14th. On the contrary, the order dated 21-12-2017 mentions the execution date as 03-11-2017. There is no explanation for this material contradiction and the orders are bad in the eyes of law. Later on, petitioner was arrested and which remains against the petitioner, is outcome of the order of proclamation i.e. FIR registered under Section 174-A IPC.

10. Given above, the present petition is allowed. The impugned proclamation order P-

2 and the consequent FIR registered under S. 174-A IPC are quashed qua the petitioner. All subsequent proceedings in the FIR registered under S. 174-A IPC are quashed as set aside.

11. The petition is allowed. All pending miscellaneous applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.08.2024
Sonia Puri

Whether speaking/reasoned	Yes
Whether Reportable	NO