

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

CRR-1936-2018
Date of Decision- 09.09.2024

MUFID ALIAS MUFTI

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Pinki Mehta, Advocate
for the petitioner.

Mr. B.S.Virk, Senior DAG, Haryana

SANDEEP MOUDGIL, J

1. This revision petition has been directed against the judgment dated 17.04.2018 passed by the learned Chief Judicial Magistrate, Kaithal, thereby convicting and sentencing the petitioner for rigorous imprisonment for 3 months for the offence under Section 174-A of the Indian Penal Code (for short – ‘IPC’) in the case arising out of FIR No.174 dated 28.03.2018 under Section 174-A of IPC and also against the order dated 16.05.2018, passed by the learned Additional Sessions Judge, Kaithal (for short – ‘appellate Court’), affirming the judgement dated 17.04.2018 of the learned Chief Judicial Magistrate, Kaithal (for short – ‘trial Court’).

Today, Ms. Pinki Mehla, Advocate, has put in appearance on behalf of the petitioner and filed her Power of Attorney, which is taken on record.

2. It is contended by the learned counsel for the petitioner that the prosecution has failed to prove the charge against the petitioner because the official who allegedly visited the place of the petitioner for executing proclamation process has not been examined before the learned trial Court. There is no evidence on the file to show whether any non-bailable warrants or any summons of the petitioner were issued at any stage or any attempt to execute the same was made. The examination of the Ahlmad of the concerned Court, who issued the Proclamation or bailable/non-bailable warrants, would be necessary but this has also not been done by the prosecution nor he was cited as witness by the prosecution. The incriminating material coming on record against the petitioner was not put to him in his statement under Section 313 Cr.P.C.

It is further contended on behalf of the petitioner that the petitioner was accused in FIR No.191 dated 14.04.2007 registered at Police Station City Kaithal under Section 395 and 412 of IPC. He could not appear before the trial Court as he forgot the date and was declared Proclaimed Offender without following the due procedure of law. Hence, FIR No.85 dated 08.02.2018 was registered against him under Section 174-A IPC, thereafter, two more FIRs No.79 dated 06.02.2018 and 173 dated 28.03.2018 were also registered against the petitioner and he has already undergone the awarded sentence in those cases. However, in the present FIR, he preferred an appeal before the Court of Session against the judgment of the learned

CJM, which has been dismissed, vide order dated 16.05.2018, without appreciating the above stated irregularities on the part of the prosecution.

3. On the other hand, it is submitted by the learned State counsel that there is no illegality or ambiguity in the judgement and order passed by the learned Courts below. The petitioner is habitual of jumping the bail and rather three FIRs, apart the present one, were earlier registered against the petitioner for the same charge/offence under Section 174-A IPC as such the petitioner has been rightly convicted and sentenced by the learned trial Court and his appeal has also been rightly dismissed by the learned Appellate Court. The discrepancies, if any, are quite ignorable because of procedural lapse, which cannot be fatal to the judgment of trial Court and order passed by the learned appellate Court.

4. Heard learned counsel for the respective parties at length and case file also perused.

5. It has come to the notice of this Court from the perusal of the case file that petitioner had been repeatedly violating the bail order and facing consequences by his prosecution by the learned Court below under Section 174-A of the Indian Penal Code. It is also argued by the counsel for the petitioner that the petitioner has undergone sentences awarded to him by the learned Court(s) concerned.

6. Now coming to the argument with respect to non-service of the proclamation, it is seen by this Court from the impugned judgment of the learned trial Court wherein in para 17, it is recorded that :

“17. The original case file of F.I.R. No.191 dated 14.04.2007 under Sections 395 and 412 of IPC, Police Station City, Kaithal, was also requisitioned, a perusal of the which

shows that vide order dated 04.09.2007 passed by the then learned Chief Judicial Magistrate, Kaithal, proclamation under Section 82 of Cr.P.C. was ordered to be issued against the accused for 04.09.2007. The proclamation was duly effected by Ct.Subhash Chand on 31.07.2007 and his statement in this regard was also made by the serving constable on 02.08.2007 before the Court.....”

Therefore, the court is amazed to puruse that the order for proclamation was issued vide order dated 04.09.2007, and on the same very date the petitioner was declared as proclaimed, i.e., 04.09.2007 and the person effecting proclamation was Ct.Subhash Chand but statement was got recorded by Serving Constable, as such, this prima facie shows that person effecting proclamation and serving constable are two different persons and accordingly, the argument so raised, on behalf of the petitioner, that the person who alleged effected proclamation was not examined by the prosecution is found to be correct. Further, the date(s) of order of proclamation and submission of report of proclamation are also one and the same, i.e. 04.09.2007. The learned Appellate Court has gone to the extent to dismiss the appeal only due to the reason that the petitioner did not appear before the Court on the due date, i.e., 04.09.2007 and that no more argument is raised.

7. A perusal of the judgement of the learned trial Court has further revealed that the prosecution has examined only one witness on its behalf who is SI Krishan Kumar, PW-1, however, no other witness has been examined by the prosecution to prove the effecting of proclamation and the manner in which it was affected and by whom effected. Thus, it is rightly

argued by the learned counsel for the petitioner that proclamation is not proved on record by the prosecution.

8. Consequently, this Court is fully satisfied that the prosecution has failed to prove effecting of proclamation against the petitioner and accordingly, the present revision petition succeeds and the impugned judgment convicting and sentencing the petitioner for rigorous imprisonment for 3 months for the offence under Section 174-A of the Indian Penal Code, dated 17.04.2018, passed by the learned Chief Judicial Magistrate, Kaithal, in the case arising out of FIR No.174 dated 28.03.2018 under Section 174-A of IPC and also the impugned order dated 16.05.2018, passed by the learned Additional Sessions Judge, Kaithal affirming the judgment of conviction and sentence, dated 17.04.2018, are hereby set aside.

09.09.2024
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(SANDEEP MOUDGIL)
JUDGE

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