



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-29025-2024 (O&M)

Date of Decision: 18.10.2024

Mukesh Kumar alias Mukesh

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Ramnish Puri, Advocate for the petitioner.

Mr. Aditya Pal Singla, A.A.G., Haryana.

NIDHI GUPTA, J. (ORAL)

Prayer in the present 2nd petition under Section 482 Cr.P.C. is for quashing of impugned order dated 26.03.2018 (Annexure P-5) passed by learned Judicial Magistrate 1st Class, Jind in FIR No. 102 dated 05.09.2017 under Sections 376(2)(n), 376(2)(f) and 354-A IPC registered at Women Police Station, Jind (Annexure P-1) being *inter alia* passed in utter violation of the mandate of Section 82 Cr.P.C. as well as keeping in view the facts and circumstances of the present case.

On the last date of hearing i.e. 05.09.2024, following order was passed by this Court:-

“Prayer in the present 2nd petition under Section 482 Cr.P.C. is for quashing of impugned order dated 26.03.2018 (Annexure P-5) passed by learned Judicial Magistrate 1st Class, Jind in FIR No. 102 dated 05.09.2017 under Sections 376(2)(n), 376(2)(f) and 354-A IPC registered at Women Police Station, Jind (Annexure P-1) being inter alia passed



in utter violation of the mandate of Section 82 Cr.P.C. as well as keeping in view the facts and circumstances of the present case.

Learned counsel for the petitioner inter alia submits that the petitioner was in fact in a consensual relationship with the complainant. However, it was the complainant who had not disclosed to the petitioner that she was previously married to someone else. As such, allegations made in the FIR are utterly false and fabricated. Learned counsel for the petitioner submits that the petitioner had left India for Malaysia on 29.08.2017 as is verifiable from the passport entries made in his passport (Annexure P-6). It is submitted that the present FIR has been registered at the back of the petitioner on 05.09.2017. Even the impugned order declaring the petitioner as proclaimed person dated 26.03.2018 has been issued at the back of the petitioner as the petitioner has come back to India only on 24.01.2019. It is reiterated that all the above said entries can be verified from the passport of the petitioner appended herein as Annexure P-6. It is accordingly prayed that the impugned order dated 26.03.2018 (Annexure P-5) be set aside and the petitioner be permitted to surrender before the learned trial Court as and when directed to do so.

Notice of motion.

Ms. Deepshika Chauhan, A.A.G., Haryana accepts notice on behalf of the respondent-State and opposes the prayer made on behalf of the petitioner and submits that the impugned order was issued as far back in the year 2018 and the petitioner has not appeared before the learned trial Court thereafter. The co-accused of the petitioner i.e. father has been acquitted by learned trial Court vide judgment dated 27.11.2023 (Annexure P-3) passed in Criminal Case No. RBT 159 of 2019 titled as 'State vs. Maman Ram @



Mithu'.

Learned counsel for the petitioner counters the above said submissions made on behalf of learned counsel for the State and submits that as is evident from disinheritance published in Jagat Kranti, Jind on 02.09.2015, father of the petitioner has disinherited the petitioner as far back in the year 2015. Thereafter, the petitioner and his father were not on talking terms; and it is only in the year 2024, the petitioner came to know that his father has been acquitted in the FIR in question. It is submitted that even arrest warrants had been issued at wrong place as is evident from the warrant of arrest that the village name is mentioned as Amarheri (Annexure P-8), whereas the petitioner is a resident of village Jharsa which is in a different district entirely. It is further submitted that even mandatory provisions of Section 82 have not been complied with as is evident from orders (Annexure P-7 collectively) as the mandatory period of 30 days' time to be given before declaring the petitioner as proclaimed person.

Learned counsel for the State, while referring to para 9 of the reply dated 24.06.2024 filed by way of an affidavit of the Deputy Superintendent of Police, Jind-Women Safety, District Jind on behalf of the State of Haryana, submits that another FIR No. 298 dated 16.08.2017 under Section 365 IPC at Police Station Sadar Jind was also registered against the petitioner. However, it is admitted that the cancellation report was prepared on 23.09.2017.

Learned counsel for the petitioner submits that the said FIR was registered by the current wife of the petitioner under some misapprehension and that FIR has already been cancelled.

I have heard learned counsel for the parties.



*In view of the submissions made by learned counsel for the petitioner, the proclamation order dated 26.03.2018 (Annexure P-5) is set aside. The petitioner is directed to surrender before the learned trial Court within a period of 15 days from today i.e. on or before **20.09.2024** and he shall move an appropriate application seeking bail before the learned trial Court. The learned trial Court will entertain the bail application of the petitioner on the same date and he shall be released on bail subject to his furnishing necessary bail/surety bonds to the satisfaction of learned trial Court subject to payment of costs of **Rs.20,000/-** to be deposited by the petitioner with in a period of one week from today with the Punjab and Haryana High Court Lawyers' Welfare Association Fund, Chandigarh.*

Adjourned to 18.10.2024.

Report from the learned trial Court be also called for the date fixed.”

In compliance of the above said order, learned CJ (JD)-cum-JMIC, Jind, has submitted his report dated 20.09.2024 duly forwarded by the learned District and Sessions Judge, Jind, the relevant portion of which reads as under”-

“In view of order dated 05.09.2024 passed by Hon'ble High Court, accused Mukesh Kumar @ Mukesh son of Maman Ram has been granted bail in the sum of ₹2,00,000/- with one surety in the like amount. Requisite bail bond and surety bond furnished by accused, which has been accepted and attested. Accused Mukesh Kumar @ Mukesh son of Maman Ram has been released forthwith. It is further submitted that, as per direction passed by Hon'ble High Court in CRM-M-

29025-2024 on dated 05.09.2024, a receipt bearing No.4330 dated 09.09.2024 of 20,000/- has been placed on the file and case has been adjourned for 14.10.2024 for awaiting of challan. Notice to the SHO concerned has been ordered to be issued for the date fixed. Hence report is submitted.”

In view of the above, nothing survives in the present petition and the same stands disposed of.

Pending application, if any, stands disposed of.

18.10.2024
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No