



HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

220

CRM-M-29952-2024(O&M)

Date of decision: 08.11.2024

Vipin Dhariwal @ Vipin Kumar

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Chirag Suri, Advocate for the petitioner.

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

NIDHI GUPTA, J. (Oral)

Present **second** criminal miscellaneous petition is filed by the petitioner under Section 482 Cr.P.C. for quashing the order dated 22.11.2023 (Annexure P5) passed by the learned Judicial Magistrate, 1st Class, Faridabad, whereby the petitioner has been declared as a proclaimed person in case FIR No.105 dated 09.05.2022 (Annexure P1) registered under Sections 323, 34, 406, 498-A and 506 IPC at Women NIT Police Station Faridabad; AND FIR No.453 dated 03.12.2023 under Section 174-A IPC (Annexure P6); AND all/any other consequential proceedings arising thereto; AND further prayer to stay the operation of the order dated 22.11.2023 (Annexure P5) passed by the learned Judicial Magistrate, 1st Class, Faridabad as well as FIR No.453 dated 03.12.2023 under Section 174-A IPC (Annexure P6), during the pendency of the present petition and subject to the final outcome of the same.

On the last date of hearing i.e. 14.10.2024, following order was passed by this Court:-



*“Present **second** criminal miscellaneous petition is filed by the petitioner under Section 482 Cr.P.C. for quashing the order dated 22.11.2023 (Annexure P5) passed by the learned Judicial Magistrate, 1st Class, Faridabad, whereby the petitioner has been declared as a proclaimed person in case FIR No.105 dated 09.05.2022 (Annexure P1) registered under Sections 323, 34, 406, 498-A and 506 IPC at Women NIT Police Station Faridabad; AND FIR No.453 dated 03.12.2023 under Section 174-A IPC (Annexure P6); AND all/any other consequential proceedings arising thereto; AND further prayer to stay the operation of the order dated 22.11.2023 (Annexure P5) passed by the learned Judicial Magistrate, 1st Class, Faridabad as well as FIR No.453 dated 03.12.2023 under Section 174-A IPC (Annexure P6), during the pendency of the present petition and subject to the final outcome of the same.*

2. Learned counsel for the petitioner inter alia submits that the learned trial Court has wrongly declared the petitioner as proclaimed person as warrants of arrest were not properly executed as, it is a matter of record that the petitioner was not residing at the given address. Even compliance of mandatory provisions of Section 82 Cr.P.C. has not properly been made.

3. It is submitted that on the application moved by the Investigating Officer, on 04.03.2023 (Annexure P2) the learned trial Court issued warrants of arrest against the petitioner and other co-accused, for 14.07.2023. On 14.07.2023 (Annexure P3), the warrant of arrest issued against the petitioner and co-accused were received back unexecuted; and again the warrants of arrest has been issued for 20.09.2023. Thereafter, the proclamation was issued vide order dated 20.09.2023 (Annexure P4), for 22.11.2023. Thereafter, vide order dated 22.11.2023 (Annexure P5), the petitioner was declared as proclaimed person. It is contended that even though vide order dated 20.09.2023 (Annexure P4), the warrant of arrest issued against the petitioner remained



unexecuted, yet, without considering the earlier unexecuted warrant, the learned trial Court declared the petitioner as proclaimed person vide order dated 22.11.2023. Moreover, the learned trial Court vide order dated 20.09.2023 (Annexure P4) without considering the earlier unexecuted warrant, directed for issuance of proclamation for 22.11.2023.

4. *It is submitted that there is no evidence that any publication as required under Section 82(2) Cr.P.C. was made in some conspicuous place where the petitioner ordinarily resides. Moreover, the petitioner has not received any summon issued by the police officials in the FIR No.105 dated 09.05.2022 (Annexure P1). Even the learned trial Court has issued warrants of arrest and proclamation order in a very cursory manner, only on the application of the Investigating Officer without recording any satisfaction as to whether the petitioner had absconded, or was concealing himself. Even in the orders dated 04.03.2023 (Annexure P2), 14.07.2023 (Annexure P3) and 20.09.2023 (Annexure P4), there is no reference to any report received by the learned trial Court on warrants of arrest. It is further prayed that the petitioner may be granted one opportunity to join investigation to surrender before the learned trial Court. It is also submitted that the present FIR was registered by the complainant after nine years of marriage and thus, the same is a blatant misuse of process of law. In support of his contentions, learned counsel for the petitioner relies upon judgment of this Court in “**Sonu Vs. State of Haryana**” **Law Finder Doc ID # 1766269**.*

5. *Heard.*

6. *Ld. Counsel for the State opposes prayer made on behalf of the petitioner, however, is unable to controvert the above said facts.*

7. *In view of the above and keeping in view the totality of the facts and circumstances of the case, but without commenting upon the merits of the case, the impugned order dated 22.11.2023*



(Annexure P5) passed by the learned Judicial Magistrate, 1st Class, Faridabad, whereby the petitioner has been declared as a proclaimed person in case FIR No.105 dated 09.05.2022 (Annexure P1) under Sections 323, 34, 406, 498-A and 506 IPC at Women NIT Police Station Faridabad and FIR No.453 dated 03.12.2023 under Section 174-A IPC (Annexure P6) and all/any other consequential proceedings arising thereto, are ordered to be set aside. The petitioner is directed to surrender before the learned trial Court/Duty Magistrate within a period of 15 days from today i.e. on or before 30.10.2024 and move an application for bail, which shall be considered and disposed of by the learned trial Court/Duty Magistrate on the same day, by accepting bail/surety bonds to be furnished by the petitioner to its satisfaction, subject to payment of costs of Rs.25,000/- to be deposited by the petitioner within a period of one week from today with the Poor Patients' Welfare Fund of the PGIMER, Chandigarh.

8. *Adjourned to 08.11.2024.*

9. *Learned trial Court/Duty Magistrate, concerned shall send a compliance report in this regard by the next date of hearing."*

Fresh Status Report dated 07.11.2024 filed by way of an affidavit of the Assistant Commissioner of Police, NIT Faridabad on behalf of the respondent-State of Haryana in Court today is taken on record.

Learned counsel for the State has produced a copy of the order dated 29.10.2024 passed by learned Judicial Magistrate 1st Class, Faridabad wherein it is recorded that in compliance of order dated 14.10.2024, the petitioner has made payment of Rs.25,000/- to the Poor Patients' Welfare Fund of the PGIMER, Chandigarh and the petitioner has also surrendered before the learned trial Court. A copy of the said order dated 29.10.2024 passed by learned Judicial Magistrate 1st Class,



Faridabad has been handed over in Court, which is taken on record.

In view of the same, present petition is disposed of and order dated 22.11.2023 (Annexure P-5) declaring the petitioner as proclaimed offender is set aside.

Pending application, if any, stands disposed of.

08.11.2024
Divyanshi

(NIDHI GUPTA)
JUDGE

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