



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-31599-2020 (O&M)
Date of Decision: 19.09.2024

Shyam Petitioner

Versus

State of Haryana Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Ankur Lal, Advocate for the petitioner.

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

NIDHI GUPTA, J. (ORAL)

Prayer in the present petition under Section 482 Cr.P.C. is for quashing of the impugned order dated 22.07.2013 (Annexure P-1) passed by Ld. Chief Judicial Magistrate, Bhiwani, along with all the consequential proceedings emanating thereof; AND for quashing of the FIR No. 199 dated 20/03/2020 under Section 174-A (Annexure P-2) registered at Police Station City Bhiwani and all the consequential proceedings emanating thereof.

Learned counsel for the petitioner *inter alia* submits that an FIR No. 560 dated 31.08.2012 under Section 363 IPC (subsequently added Sections 376, 366-A IPC and Section 6 POCSO Act) was registered at Police Station City Bhiwani. Though the petitioner was initially not named in the FIR, however, subsequently, he was made accused. After facing trial, the petitioner was acquitted in the said FIR No. 560 dated 31.08.2012 vide judgment dated 26.11.2021 passed by learned Additional Sessions Judge-cum-Judge, Fast Track Special Court under POCSO Act, Bhiwani. A copy of



the said judgment is handed over in Court today and the same is taken on record.

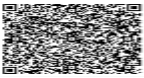
Learned counsel for the petitioner submits that in the said proceedings although the petitioner faced trial, he was declared proclaimed offender vide impugned order dated 22.07.2013 (Annexure P-1). It is submitted that the said order dated 22.07.2013 on the face of it is illegal as the same has been passed in violation of the mandatory provisions of Section 82 Cr.P.C. Learned counsel further urges that even otherwise, no useful purpose would be served by continuing the proceedings/trial in the FIR under Section 174-A IPC, as the petitioner stands acquitted in the main matter. It is accordingly prayed that the present petition be allowed, and the impugned order dated 22.07.2013 (Annexure P-1) be set aside.

Learned counsel for the State opposes prayer made on behalf of the petitioner and submits that the complainant in the FIR No. 199 dated 20.03.2020 registered under Section 174-A is the learned Chief Judicial Magistrate, who had recorded in the present FIR (Annexure P-2) that the Serving Constable has appeared in the matter and has given statement on 15.06.2013.

However, learned counsel for the State is not able to deny the above facts which are apparent on the record of the case.

Heard.

It is not disputed that the petitioner stands acquitted in the main FIR No.560 dated 31.8.2012. As regards, the present FIR No. 199 dated 20/03/2020 under Section 174-A (Annexure P-2), a perusal of the file reveals that, the proclamation was issued by the learned trial Court vide order dated 15.05.2013 (Annexure P-3 collectively) for appearance of the petitioner on



15.06.2013. However, as per the Report dated 18.05.2013 (at page No. 18 of the paper book), of the Executing Constable it is recorded, that “*at the spot the accused Shyam was not present at his home. Where does he live nobody gave his address. One proclamation in a conspicuous place at his house has been pasted on 18.05.2013.*” Undisputedly, the mandatory notice period of 30 days begins from date of service. From the above, it is clear that the petitioner was not granted period of 30 days to comply with the order dated 15.05.2013 as notice was pasted on his house only on 18.5.2013. The impugned order dated 22.07.2013 (Annexure P-1) is therefore, *prima facie* unsustainable as it does not adhere to mandatory provision of Section 82 Cr.P.C..

Furthermore, the resultant FIR No. 199 dated 20.03.2020 is also in the teeth of judgment passed by this Court in ***CRM-M-13638-2013 titled as Ashok Kumar vs. State of Haryana and another***’ Law Finder Doc ID # **484333** wherein it has been held that before registration of an FIR under Section 174-A Cr.P.C., the Court should exercise extreme circumspection.

In view of the above, this petition is **allowed**; and FIR No. 199 dated 20/03/2020 under Section 174-A (Annexure P-2) registered at Police Station City Bhiwani and all the consequential proceedings emanating therefrom including impugned order dated 22.07.2013 (Annexure P-1), are ordered to be **quashed** qua the petitioner.

Pending application, if any, stands disposed of.

19.09.2024
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No