

CRM-M-34459-2024 (O&M)

Decided on: 19.07.2024

Pawan Jain

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Keshav Pratap Singh, Advocate
For the petitioner.

Mr. Vikrant Pamboo, Sr. DAG, Haryana.

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ANOOP CHITKARA, J.

Complaint No.COMA-10-2017 dated 12.01.2017 registered under Section 18(c) and 18-A of Drugs and Cosmetics Act 1940 titled as ‘State (Through Drugs Control Officer Gurgaon) versus Pawan Jain’, District Gurugram

CRM-28713-2024

Allowed, as prayed for.

Main case

1. Seeking quashing of the order dated 30.05.2024 and 03.07.2024, passed by the Chief Judicial Magistrate, vide which fresh proclamation proceedings were initiated against the petitioner and petitioner was directed to appear before the concerned Court on 07.09.2024, the petitioner/accused has come up before this Court by filing the present petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita 2023 (in short 'BNSS 2023').

2. Counsel for the State, Mr. Vikrant Pamboo, Sr. DAG, Haryana, opposes the present petition and submits that despite their opposition if this Court allows the present petition, it should be clear that the petitioner shall appear before the concerned Court on each and every date. However, the State Counsel also submits that his objection be noticed and the reasons for non-appearance are based on the order sheet, which is annexed with the petition; as such, there is no need to file a formal reply.



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3. I have heard counsel for the parties and gone through the record and its analysis would lead to the following outcome.

4. Petitioner's counsel has referred to para 2 of the petition, as per which the above captioned criminal complaint was filed against him, notices were issued, but the petitioner was never served, and he has also annexed zimni orders (Annexure P-2) to substantiate the non-service of the petitioner.

5. I have perused the order sheet and Annexure P-2, which clearly point out that notices issued earlier on 18.05.2017 were never served upon the petitioner, as reflected in all order sheets up to 03.11.2022. When the matter was taken up on 13.07.2023, the Chief Judicial Magistrate, Gurugram, observed that since the notices were not received back served or unserved, he issued bailable warrants against the petitioner, returnable for 14.09.2023. However, the order dated 14.09.2023 indicates that bailable warrants were returned unexecuted. Subsequently, on 30.05.2024, the concerned Chief Judicial Magistrate passed the following order: -

"Today the case was fixed for securing presence of accused by way of warrant of arrest. Warrant of arrest issued to accused not received back. Repeatedly warrant of arrest were issued against accused, above named, but the presence of accused has not yet been secured. It appears that the presence of accused, above named, cannot be secured by way of execution of warrant of arrest, as he absconded or is concealing himself. Let, proclamation warrant u/s 82 Cr.P.C. be issued against accused for 06.08.2024 for presence of accused. Tamili concerned is directed to appear before the court on 03.07.2024 for recording his statement regarding due publication of proclamation warrant. Ahlmad is directed to do the needful for strict compliance."

6. Subsequently, the order was not duly effected, and on 03.07.2024, the concerned Chief Judicial Magistrate passed the following order: -

"Today the case was fixed for recording statement of Tamili, however, concerned Tamili has not appeared before the Court. Hence keeping in view the same, let, fresh proclamation warrant u/s 82 Cr.P.C. be issued against accused for 07.09.2024 for presence of accused. Tamili concerned is directed to appear before the court on 06.08.2024 for recording his statement regarding due publication of proclamation warrant. Ahlmad is directed to do the needful for strict compliance."

7. An analysis of the above-said order points out that neither any notice was served nor any bailable/non-bailable warrants were executed. Thus, there is nothing to presume that the petitioner was aware of the filing of the complaint or pendency of the matter before the concerned Court.



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8. Petitioner's counsel submits that now he has come to know about the complaint and issuance of proclamation against him, and he undertakes to appear on each and every date without any single default except when reasons are beyond his control. The petitioner's counsel further submits that there is no evidence to show that the petitioner had any role in the non-service of summons or bailable warrants. His next submission is that it is not reflected in the order that service was not effected upon him because of his role or influence.

9. A perusal of the order sheet and the circumstances clearly point out that the trial Court had proceeded to issue a proclamation without waiting for the execution of non-bailable warrants. Thus, it appears that the trial Court hastened to issue proclamation proceedings under Section 82 CrPC, 1973 without any justification.

10. Given above, the impugned orders dated 30.05.2024 and 03.07.2024 are quashed and set aside. It is clarified that since the petitioner has undertaken to appear on each and every date, this undertaking has also weighed as one of the factors that resulted in the decision above, and if the petitioner now does not appear before the trial Court, it should be permissible for the trial Court to proceed in accordance with the law.

11. **Petition is allowed with the observation mentioned above.** Pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

19.07.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.