

RAMBIR SINGH

Versus

STATE OF HARYANA AND ANOTHER

.....Petitioner

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ram Pal Verma, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

Ms. Sharmila Sharma, Advocate for
Mr. Sandeep, Advocate for respondent No.2.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 482 CrPC, prayer has been made for quashing of FIR No.0146 dated 25.03.2018 registered under Section 174-A of IPC at P.S. Sonipat Sadar, District Sonipat.

2. In the present case, in pursuance of summoning order arising out of a complaint under Section 138 of Negotiable Instrument Act, 1881 filed against petitioner at the instance of respondent No.2, he was declared as proclaimed person vide order dated 01.02.2018 followed by issuance of directions of registration of FIR against him under Section 174-A of IPC.

3. Learned counsel for the petitioner submits that the declaration of petitioner as proclaimed person was in violation of Section 82 of CrPC as no clear cut period of 30 days was ever afforded to him in pursuance to a proclamation made in terms of order dated 06.12.2017. He also submits that the parties have entered into a

settlement resulting into withdrawal of the complaint under Section 138 of Negotiable Instruments Act, 1881 vide order dated 29.11.2018.

4. On the other hand, learned State counsel vehemently opposes the prayer made in the petition while submitting that despite having knowledge about the pendency of proceedings against him, the petitioner chose not to appear before the trial Court and as such the order dated 01.02.2018 passed by the trial Court warrants no interference.

5. I have heard learned counsel for the parties and gone through the paper-book.

6. A perusal of record shows that the proclamation under Section 82 of CrPC was ordered on 06.12.2017 for 02.01.2018 against the petitioner i.e. for a period of less than 30 days and on 02.01.2018, the proceedings were adjourned for 30.01.2018 so as to await the presence of petitioner upon completion of minimum prescribed period of 30 days. Subsequently on 01.02.2018, on account of non-appearance, the petitioner was declared as proclaimed person, the orders dated 06.12.2017 and 02.01.2018 passed by the trial Court are reproduced hereunder:-

Order dated: 06.12.2017

"Bailable warrants issued against accused and notice to his surety received back duly executed. Despite repeated calls, neither the accused nor his surety appeared in the court. In view of the report made on the bailable warrants, I feel satisfied that the accused is avoiding service of bailable warrants knowingly and the presence of accused could not be secured through ordinary process. Hence, the accused be summoned through proclamation u/s 82 Cr.P.C for 2.1.2018. Serving Constable shall effect the proclamation at least one month prior to the date fixed. Executing Constable is further directed to appear in the court for making his statement

on that date. Complainant is directed to assist serving constable in serving the proclamation.”

Order dated: 02.01.2018

“Proclamation issued against accused received back duly published. Executing official has also come present. His statement has been recorded separately. Proclamation was published according to provision u/s 82 Cr.P.C. Presence of accused is awaited at a least for a period of 30 days. In these circumstances, case is adjourned to 30.01.2018 for presence of accused.”

7. A perusal of aforementioned orders show that the proclamation which was ordered on 06.12.2017 for 02.01.2018 fell short of the statutory period of 30 days as prescribed under section 82 of CrPC thereby, rendering the declaration of proclamation vide order dated 01.02.2018 bad in the eyes of law. Moreover, parties have already entered into settlement and original complaint under Section 138 of Negotiable Instruments Act, 1881 stands withdrawn vide order dated 29.11.2018 and above all, the petitioner has even been granted concession of anticipatory bail in FIR No.0146 dated 25.03.2018. In the wake of declaration of petitioner as proclaimed person being violative of Section 82 of CrPC, the continuation of proceedings arising out of FIR in question would be misuse of process of law.
8. In view of the aforesaid facts and circumstances, the present petition is allowed.

05.02.2024
Tejwinder

(HARKESH MANUJA)
JUDGE

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