

CRM-M-43654-2019

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43654-2019
Reserved on: 04.09.2024
Pronounced on: 13.09.2024

Aarti Sharma and others
...Petitioners
Versus
State of Punjab and another
...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
Present: Mr. Sandeep Wadhawan, Advocate and
Mr. Gurjot Singh, Advocate
for the petitioners.
Mr. Jasjit Singh, DAG, Punjab.
Mr. Suvir Tandon, Advocate
for respondent No.2.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
51	08.04.2015	E-Division, Amritsar City, District Amritsar	420, 406, 506 IPC

1. Challenging the order of proclamation on being declared as a proclaimed offender vide order dated 21.07.2017, passed by the Additional Chief Judicial Magistrate, Amritsar, and for quashing of the FIR captioned above on the basis of compromise, the petitioner, a shopkeeper, has come up before this court under section 482 of the Code of Criminal Procedure, 1973 (CrPC).
2. On 28.08.2024, petitioner confined his prayer qua quashing of the order dated 21.07.2017 and this Court had passed the following order:
- “CRM-34081 of 2024**
Allowed as prayed for.
CRM-34082 of 2024
For the reasons mentioned in the application, the same is allowed and the documents are taken on record as Annexure P-4 to P-10.

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Main case

Counsel for the State, on instructions from ASI Raju, P.S. E- Division, Amritsar, has taken a specific stand that all the petitioners have been declared as proclaimed offenders and the present petition is not maintainable.

On the other hand, counsel for the petitioner submits that he would be confining the present petition qua the prayer for setting aside of proclamation order and withdraw the other prayer for quashing of FIR based on compromise with liberty to file fresh after the closure of the proclamation proceedings. It is further submitted that dispute between the parties which has now been settled. Counsel for the complainant-respondent No.2 does not dispute the factum of compromise and submits that he has no objection if the proclamation is quashed. The reasons for non-appearance which led to issuance of proclamation are mentioned in para No.3 of the petition which read as follows:-

"3) That the petitioner No.3 was never served in the present case and has been wrongly declared a proclaimed offender vide order dated 21.07.2017 passed by the Id. Addl. Chief Judicial Magistrate, Amritsar. It is submitted that even otherwise, the order dated 21.07.2017 is illegal since the petitioner No. 3 was never served and as per the provisions of section 82(4) Cr.P.C., the offences of which the petitioner No.3 is accused, the petitioner could not have been declared a proclaimed offender. Moreover, since now the matter has been amicably settled, the continuation of proceedings against the petitioner No.3 would be nothing but an abuse of process of law. A copy of the order dated 21.07.2017 is annexed herewith as Annexure P-3"

Counsel for the petitioner submits that he would voluntarily deposit a sum of Rs.10,000/- for each petitioner in Poor Patient Welfare Fund in PGIMER, Chandigarh and he seeks a week time to do the same.

Given above, list on 04.09.2024.

Let the petitioner place on record the receipt of such deposit."

3. Given the above order, petition survive qua order dated 21.07.2017 only.
4. The petitioner has placed on record the receipts of the deposit of the amount in PGI Poor Patients Welfare Funds.
5. An analysis of the submissions and the petition would lead to the following outcome.
6. It remains undisputed that when the petitioner got to know about his being declared a proclaimed offender, he took a legal remedy and came up before this Court. It also remains undisputed that it never happened that police officials caught him or tried to run away to avoid an appearance in Court. It also remains undisputed that the petitioner is a shopkeeper, and, as such, he would have a permanent place of business; despite this, the police could not serve him. In such a situation, the petitioner has proved his case by a

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preponderance of probabilities and has prima facie established that his non-appearance was beyond his control. Although there is a massive delay in proclamation proceedings, which have been pending for a decade, the petitioner on his own came before this Court, undertaking to attend the trial, and it is not the police who have been able to catch him.

7. The State's counsel submitted that if this Court is granting any concession to the petitioner, it must be subject to some reprimand. The petitioner's counsel declared that if this court imposes reasonable and affordable costs, the petitioner shall deposit the same.

8. The primary object of the service is to secure the accused's presence at trial. The petitioner approached this court independently, establishing the bonafide at this stage. Without commenting on the case's merits, and in the facts and circumstances peculiar to this case, and also for the reasons mentioned above, the ends of justice would meet if limited relief to the petitioner is granted, subject to the compliance of the conditions mentioned in this order.

9. Given above, the petitioner is directed to surrender before the concerned court **on or before 30.09.2024, 11 AM**. Till then, arrest of the petitioner shall remain stayed. On or before this date, if the petitioner files bail application(s) before the concerned Court(s) of the concerned district, given the undisputed fact of the acquittal of the accused sent to the trial, this court is requesting the concerned trial court to consider petitioner's bail on his surrendering on the same day.

10. There shall be a stay of the petitioner's arrest in the case mentioned above and the resultant FIR under section 174-A of IPC, if any registered, till 30.09.2024, to enable the petitioner to exercise their statutory rights of pre-arrest bail. This stay is subject to the petitioner's surrender, as mentioned above, failing which this protection shall also stand recalled. It is clarified that if the petitioner appears before the concerned court, then all warrants issued by the concerned court against the petitioner in the matter mentioned above shall stand recalled and canceled. It is clarified that if the petitioner fails to appear before the concerned court within the time limit mentioned in this order, then this order shall be recalled automatically under section 362, read with 482 CrPC/ 403 read with 528 of BNSS, 2023, without any further reference to this court, on 01.10.2024 at 11 AM.

11. It is clarified that this order shall not be construed as an order of bail for which liberty is reserved to file before the appropriate Court if the need arises.

12. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

13. *A certified copy of this order would not be needed, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the concerned court/ officer wants to verify its*

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authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

Petition is partly allowed to the extent mentioned above. All pending applications, if any, stand disposed of. Liberty reserved to raise the given-up relief(s) in the subsequent petition(s) if the need arises.

(ANOOP CHITKARA)
JUDGE

13.09.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: NO.