

2024:PHHC:147823



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

267

CRM M-49561 of 2023
Date of Decision: 17.09.2024

Balwinder Singh ...Petitioner
Versus
State of Haryana and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Ms. Rajvinder Kaur Sohal, Advocate, for the petitioner.
Mr. Rajinder Kumar Banku, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the order dated 03.07.2023 (Annexure P-4) passed by the Judicial Magistrate 1st Class, Kurukshetra, whereby, the petitioner was declared as a proclaimed person in case FIR No. 937 dated 26.10.2016 under Sections 186, 332, 34, 353, 504 and 506 of IPC, Police Station Thanesar City, District Kurukshetra (Annexure P-1).
2. Learned counsel for the petitioner contends that the respondent No. 2 had lodged a FIR No. 937 dated 26.10.2016 under Sections 186, 332, 34, 353, 504 and 506 of IPC, Police Station Thanesar City, District Kurukshetra (Annexure P-1) against the

petitioner. After the completion of the investigation, the final report under Section 173 Cr.P.C. (Annexure P-2) was presented on 18.01.2018 before the Court. He further contends that the occurrence had taken place on 10.10.2016 and as a part of compromise, the petitioner had made a cash payment of Rs.27,000/- to respondent No. 2 to settle the dispute. After the incident, the petitioner resumed his duties in Army at Srinagar and was not aware of the legal proceedings. During the trial, notices were issued to the petitioner for appearance before the trial Court. However, even before that, the petitioner had already joined Army and was deployed on duty. Thus, it was impossible for him to acknowledge the summons. Learned counsel for the petitioner has referred to various impugned orders passed by the trial Court, whereby, the summons/NBW's were issued against him and, ultimately, vide the impugned order dated 03.07.2023, the petitioner was declared as proclaimed person.

3. Learned counsel further submits that as per Section 125 of the Army Act, when an army man commits a crime, he can be tried by a regular criminal Court or a military Court and the decision about the Court has to be taken by the Commanding Officer of the Military Unit, where, the petitioner was posted. If the case is to be tried by a court-martial, the accused can be confined in military facility rather than a regular jail. It is a military commander, who had the authority

to determine whether the case should be handled by the military justice system or by a civilian criminal court.

4. Learned counsel for the petitioner further submits that even the trial Court was under a legal obligation to inform the Army Authorities or Commanding Officer of the Army and, thereafter, the action may be taken against him.

5. On the other hand, learned State counsel has vehemently argued that the petitioner had not appeared intentionally before the Court and does not deserve any leniency.

6. I have heard the rival submissions made by learned counsel for the parties and perused the record.

7. It is not in dispute that at the relevant time, the petitioner was serving in the Army and remained posted on his duties at Srinagar and other places, where his unit was posted. In fact, he was posted in the sensitive border areas and there is nothing on record to show that the Army Authorities had accorded permission for trial of the petitioner by the Court of Judicial Magistrate 1st Class, thus, declaring the petitioner as proclaimed person in the present case can never be justified and the said order is legally unsustainable.

8. Consequently, the petition is accepted and the impugned order dated 03.07.2023 (Annexure P-4) passed by the Judicial Magistrate 1st Class, Kurukshetra is ordered to be set-aside.

9. However, the petitioner is directed to appear before the trial Court within a period of 08 weeks from today and he shall join the proceedings before the trial Court. The trial Court shall also take steps for expeditious disposal of the trial pending before it.
10. The petition accordingly stands disposed off.

17.09.2024	(N.S.SHEKHAWAT)
amit rana	JUDGE
Whether reasoned/speaking	: Yes/No
Whether reportable	: Yes/No