

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.49154 of 2023 (O&M)
Date of Decision: 14.02.2024

PAWAN KUMAR ALIAS KALUPetitioner
Vs
STATE OF HARYANARespondent

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. Lalit Kumar Narang, Advocate for the petitioner.
Mr. Rajiv Sidhu, D.A.G., Haryana.

HARKESH MANUJA, J. (Oral)

[1]. By way of present petition under Section 482 Cr.P.C., prayer has been made for quashing of the order dated 31.10.2018 (Annexure P-1) passed by the Judicial Magistare Ist Class, Bhiwani, whereby the petitioner was declared as absconder in the proceedings arising out of FIR No.0100 dated 25.04.2018 registered under Section 420 IPC (Section 120-B IPC added later on) followed by registration of FIR No.310 dated 07.09.2019 registered under Section 174-A IPC at at Police Station Bhiwani Civil Lines, District Bhiwani along with all consequential proceedings arising therefrom.

[2]. Briefly stating, FIR No.0100 dated 25.04.2018 was got registered at the instance of the complainant against the petitioner on account of his alleged failure to get the sale deed executed. On account of non-appearance, proceedings under Section 82 Cr.P.C. were ordered against petitioner and as a consequence thereof, he was declared as absconder vide order dated 31.10.2018 followed by registration of FIR No.310 dated 07.09.2019 under Section 174-A IPC against him.

[3]. Impugning the aforementioned order dated 31.10.2018 as well as FIR No.310 dated 07.09.2019, learned counsel for the petitioner submits that proceedings under Section 82 Cr.P.C., were concluded against the petitioner in violation of mandate of the provision as required under Section 82(2)(i)(a) Cr.P.C. was never complied with, thus the impugned order along with FIR No.310 dated 07.09.2019 are liable to be quashed. Learned counsel also submits that the matter has been amicably settled between the parties and the petitioner has already approached this Court for quashing of FIR No.0100 dated 25.04.2018 on that basis by way of filing CRM-M No.43701 of 2023 titled '*Pawan Kumar and another vs. State of Haryana.*' Panchayati Compromise has also been appended along with present petition as Annexure P-5.

[4]. On the other hand, learned counsel opposes the prayer made on behalf of the petitioner while submitting that petitioner was having knowledge of pendency of proceedings arising out of FIR No.0100 dated 25.04.2018, but he deliberately chose not to appear before the Trial Court resulting into his declaration as absconder followed by registration of FIR against him.

[5]. Learned State counsel also refers to the statement of executant officer, wherein it was specifically stated that the proclamation was affixed outside the house of accused; another copy of the same was affixed at the neighbouring house of the accused and third copy pasted outside the Court, thus there was due compliance under Section 82 Cr.P.C. before proceeding against the petitioner and as such the impugned order dated 31.10.2018 warrants no interference.

[6]. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

[7]. Perusal of the aforesaid statement shows that proclamation under Section 82 Cr.P.C. was never read publically at some conspicuous place of the town where the petitioner was residing and, thus there was no compliance of Sub-section 2(i)(a) of Section 82 Cr.P.C. Once Section 82 Cr.P.C., which regulates the liberty of an individual and the same emanates from Article 21 of the Constitution of India, thus becomes inviolable. Moreover, the matter has been amicably settled between the parties and a Panchayati Compromise has also been appended along with the present petition as Annexure P-5. Even the petitioner has filed CRM-M No.43701 of 2023 for quashing of FIR No.0100 dated 25.04.2015 on the basis of said compromise.

[8]. In view of above and on account of non-compliance of Sub-section 2(i)(a) of Section 82 Cr.P.C., the order dated 31.10.2018 passed by the Judicial Magistrate Ist Class, Bhiwani declaring the petitioner as absconder cannot be sustained and accordingly the present petition is allowed. The impugned order dated 31.10.2018 is set aside and FIR No.310 dated 07.09.2019 registered under Section 174-A IPC at at Police Station Bhiwani Civil Lines, District Bhiwani along with all consequential proceedings arising therefrom is quashed, however, subject to payment of cost(s) of Rs.10,000/- to be deposited in the Poor Patients Welfare Fund of the PGIMER, Chandigarh within a period of 15 days from today.

February 14, 2024	(HARKESH MANUJA)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No