



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-52151-2023
DECIDED ON: 30.04.2024**

GURJIT SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANR.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jaideep Verma, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

Mr. Ajay Singh, Advocate for
Mr. Nirmaljeet Singh Sidhu, Advocate
for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 482 Cr.P.C. for quashing of FIR No.57, dated 13.03.2023 (Annexure P-18), under Section 174-A IPC, at Police Station Division -5, Ludhiana as well as order dated 16.01.2023 (Annexure P-12), passed by JMIC, Ludhiana in CHI/1904/2018, registered on 17.05.2018 titled as State versus Harpreet Singh @ Happy in FIR No.15, dated 25.01.2018 (Annexure P-1), under Sections 379, 411 IPC and Sections 25, 54, 59 of Arms Act, registered at Police Station SBS Nagar, Ludhiana as well as order dated 13.03.2023 (Annexure P-14) passed by Additional Sessions Judge, Ludhiana in CRR-398-2023.

2. Briefly stated that the petitioner is a licensed holder of weapon 32 bore pistol bearing licence No.DM/SNG/ARM/DHSD/0916/477 which was stolen during the gathering of Kabadi match at Malerkotla. That on 25.01.2018, Harpreet Singh @ Happy son of Sukchain Singh resident of H.No.5053, Street No.2, Shimlapuri, Tehsil and District Ludhiana was apprehended to have stolen the said revolver against which an FIR No.15, dated 25.01.2018, under Sections 379, 411 IPC and Sections 25, 54, 59 of Arms Act was lodged at Police Station SBS Nagar, Ludhiana.

3. Thereafter, the weapon was taken by the petitioner on superdari and challan was presented before JMIC, Ludhiana on 17.05.2018 wherein the petitioner was arrayed as a witness, however, the investigating agency never informed the same and he was kept awaited for his evidence in the trial Court since 2018. Further, for six years, the petitioner was kept awaited for his evidence and finally on 14.01.2023 he went abroad and deposited the weapon in safe custody in gun house namely "International Gun House" Dhuri and informed the same to the Investigating Officer.

4. Further on 11.10.2022, JMIC, Ludhiana straight away cancelled and forfeited the superdari bonds and issued non-bailable warrants of arrest against the petitioner without making any efforts to serve him the notices properly. Thereafter, to his utter shock and dismay, in February, 2023, the petitioner came to know that he has been declared as proclaimed offender vide order dated 16.01.2023 which compelled him to appoint Hakam Singh as Special Power of Attorney (Annexure P-4) to verify the entire matter on his behalf when the petitioner is not residing at the given address.

5. Feeling aggrieved the petitioner assailed the impugned PO order dated 16.01.2023 before the Sessions Court, which was dismissed *in limine*

vide order dated 13.03.2023 which was complied by the petitioner wherein he moved an application to recall the order dated 16.01.2023 and to allow him to appear as witness through video conference as he is residing in Australia wherein he was directed by the trial Court to appear in the office of Indian High Commission at Australia as witness on 06.04.2023 but there also he was not allowed to record the statements which compelled him to file an application under Section 311 Cr.P.C. for which no order has been passed till date. Further the petitioner preferred criminal miscellaneous bearing CrI.Misc.-M-41072-2023 before this Court to challenge the PO order as well as the order of the revisional Court wherein at the first date of hearing, the State counsel disclosed that FIR No.57, dated 13.03.2023 under Section 174-A IPC registered at Police Station Division 5, Ludhiana has been lodged against the petitioner on the basis of Court orders, however, no offence is made out against him if the contents of FIR (Annexure P-18) is to be taken on the face of it.

6. Learned counsel for the petitioner contends that the petitioner waited for good six years to record his evidence but he was never served with a proper channel which led him to be lead as proclaimed offender for no fault of his added with the fact that petitioner had made all the conventional efforts to make himself available even through video conferencing at Australia but due to laxity of trial Court the said order was not communicated to the India High Commission, Australia.

7. He further contends that the investigating agency failed to realize the fact that the petitioner was not residing at the given address where the summons were issued to him rather he was residing at Chandigarh and Delhi to complete his visa formalities.

8. Rather it was a gross negligence on the part of the trial Court wherein his proclamation orders were passed when he was not present in the country which made him unaware of the fact that he had proclamation proceedings going on against him.

9. Per contra, learned State counsel and counsel for respondent No.2 submitted on similar lines that the petitioner has deliberately evaded from the process of law by not appearing before the trial Court being fully aware of the fact that proclamation proceedings have been initiated against him vide order dated 16.01.2023 whereas he had gone abroad on 14.01.2023 meaning thereby all the averments made by the petitioner stands frivolous and mala fide.

10. Heard learned counsel for the respective parties at length.

11. The instant case revolves around the witness being declared as proclaimed offender wherein his licensed weapon .32 bore pistol was stolen during the gathering of kabadi match at Malerkotla. Pursuant to this event an FIR No.15, dated 25.01.2018, under Sections 379, 411 IPC and Sections 25/54/59 of Arms Act was lodged at Police Station SBS Nagar, Ludhiana against one Harpeet Singh @ Happy and also the weapon was recovered. It is the grievance of the petitioner that he being a witness had to wait for good six years to get his evidence recorded but the same was not conducted on one pretext or the other.

12. Perusal of the file in hand signs towards the fact that the petitioner left the country on 14.01.2023 and the proclamation proceedings were initiated against him on 16.01.2023. His bona fide stands clear from the fact that before leaving the country he deposited the case property in the safe custody at International Gun House. It is his genuine believable case that he

was not being summoned at his current address because he was busy arranging his Visa. It is also evident from the record in hand that he made all possible efforts to make his evidence record but to no avail.

13. Moreover, at the very outset, this Court is amazed after perusing the order of the trial Court where the necessary witness has been declared as proclaimed offender, thereby violating the procedural law wherein Section 82 Cr.P.C. is meant for appearance of an accused person. The perusal of Section 82(4) Cr.P.C. clearly shows that a witness cannot be declared as proclaimed offender even if he fails to appear despite service of non-bailable warrants, rather, the apt procedure to be adopted by the Court is provided under Section 350 Cr.P.C. At this stage, it is apposite to discuss Section 82(4), which is reproduced hereinbelow:-

“82(4)[Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459, or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.”

14. In the light of above-stated facts coupled with procedural law enshrined under Section 82 (4) Cr.P.C. it is amply clear that the trial Court has erred in declaring the petitioner-witness as proclaimed offender pursuant to which FIR No.57, dated 13.03.2023 (Annexure P-18), under Section 174-A IPC, at Police Station Division -5, Ludhiana stands registered. Therefore,

FIR No.57, dated 13.03.2023 (Annexure P-18) along with subsequent proceedings arising therefrom stands quashed qua the petitioner.

15. Ordered accordingly.

30.04.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No