



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

CRM-M-3717-2025
Date of decision: 23.01.2025

Jitendra Laljibhai Kacha alias
Kacha Jitendra Laljibhai and another Petitioners

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Arvind Kumar Sharma, Advocate
for the petitioners.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 of Cr.P.C. seeking setting aside of order dated 12.04.2022 (Annexure P-12) issued against petitioner No.1 vide which the proclamation was issued against him and order dated 11.07.2022 (Annexure P-15) passed by the learned Judicial Magistrate 1st Class, Gurugram, vide which petitioner No.1 was declared as proclaimed person and further quashing of FIR No.1901 dated 18.11.2022 under Section 174-A of IPC registered at Police Station Shivaji Nagar, Gurugram District Gurugram, Haryana and all consequential proceedings arising therefrom.

2. Learned counsel appearing for the petitioners *inter alia* contends that the complainant/respondent No.2 has filed complaint against the petitioners and subsequently, notice and warrants were issued vide orders dated 17.05.2018, 07.08.2018, 26.10.2018, 23.01.2019, 22.05.2019, 06.11.2019 & 15.02.2020 but the same were never served upon the accused/petitioner No.1.

Thereafter, the matter was adjourned on various occasions due to outbreak of



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COVID-19 till 14.12.2021. On 14.12.2021, the learned trial Court issued non-bailable warrants to petitioner No.1 for 12.04.2022. On 12.04.2022 (Annexure P-12), on account of receipt of report regarding issuance of non-bailable warrants as 'unexecuted', issued proclamation under Section 82 of Cr.P.C. for 09.06.2022. On 11.07.2022 (Annexure P-15), petitioner No.1 was declared as proclaimed person and further a direction was issued to the SHO of concerned Police Station to initiate the proceedings under Section 174-A of IPC against petitioner No.1. Aggrieved by the said impugned orders dated 12.04.2022 (Annexure P-12) & 11.07.2022 (Annexure P-15) as well as the FIR (*supra*) under Section 174-A of IPC, petitioner No.1 has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioners submits that petitioner No.1 was never served with any summons or warrants and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Ultimately, vide impugned order dated 11.07.2022 (Annexure P-15), petitioner No.1 has been declared as proclaimed person. It is contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court. In support of his arguments, counsel for the petitioners relies upon the judgment passed by this Court in ***Sonu vs. State of Haryana 2021 (1) RCR (Cri.) 319*** and the judgment passed by the Gujarat High Court in ***Govindbhai Patel Vs. State of Gujarat 2004 (4) RCR (Criminal) 830***.

4. It is also submitted that petitioner No.1 undertakes to appear before the trial Court on each and every date.

5. Notice of motion.



6. Ms. Geeta Sharma, DAG, Haryana, who is present in Court, accepts notice for respondent No.1 and supports the order passed by the learned trial Court by contending that petitioner No.1 did not put in appearance before the trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure his presence.

7. I have heard learned counsel for the parties and perused the record of the case with their able assistance and with the consent of parties, the matter is taken up for final disposal.

8. While the scheme of criminal justice system necessitates curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

9. A perusal of the impugned order reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioner has absconded or is concealing himself. This Court in the judgment passed in ***Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506*** has held that the Court is first required to record its satisfaction before issuance of process under Section 82 of Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality.

10. Learned State counsel very fairly concedes that the matter between

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the parties has been compromised. The learned trial Court has recorded the statement of the complainant with regard to the compromise effected with petitioner No.1 and the original complaint filed by the complainant/respondent No.2 was dismissed as withdrawn by the learned trial Court vide order dated 22.09.2023 (Annexure P-23).

11. The question which arises for consideration of this Court is whether on account of withdrawal of the complaint under Section 138 of the Act on the basis of compromise, the impugned orders dated 12.04.2022 (Annexure P-12) & 11.07.2022 (Annexure P-15) and subsequent proceedings arising therefrom, deserve to be quashed?

12. The stand of learned counsel representing the petitioners is that petitioner No.1 has been declared a proclaimed person in contravention of the prescribed procedure under Section 82 of the Code of Criminal Procedure. Petitioner No.1 was never served before the proclamation was issued under Section 82 Cr.P.C. Both the parties have settled the matter amicably which has resulted in withdrawal of the complaint under Section 138 of the Act. In the factual backdrop of this case, undisputedly, once the substantive offence already stands settled between the petitioners and the complainant, the impugned orders dated 12.04.2022 (Annexure P-12) & 11.07.2022 (Annexure P-15) and subsequent proceedings arising therefrom would be of no consequence.

13. Reliance in this regard has been placed upon various pronouncements on the issue involved in the present case. In **CRM-M-43813-2018, Baldev Chand Bansal vs. State of Haryana and another, decided on**



29.01.2019, **Vikas Sharma vs. Gurpreet Singh Kohli and another, 2017, (3) L.A.R. 584, Microqual Techno Limited and others Vs. State of Haryana and another, 2015 (32) RCR (CrI.) 790 and Rajneesh Khanna Vs. State of Haryana and another, 2017(3) L.A.R. 555**, the Coordinate Benches of this Court in identical circumstances, has held that since the main complaint filed under Section 138 of the Act stands withdrawn in view of an amicable settlement between the parties, therefore, the impugned order and consequent FIR under Section 174-A IPC would be of no use.

14. A Coordinate Bench of this Court in **Vikas Gupta vs. State of Haryana and others**, while quashing the FIR under Section 174-A of the IPC in **CRM-M-19636-2018** decided on 01.08.2018 has observed the following:-

“The ultimate aim, objective and goal of a legal system is to reconcile the social conflicts. Law is required only to ensure that people do not have to fight with each other just to protect their right to property, right to life and liberty and other rights secured to them by the legal system. The civil disputes are the conflicts between two parties, having lesser overtones for the social order, social harmony or the society as such. Hence absolute freedom is given to the parties to settle their disputes by compromises, of course, coming with certain legal consequences as well. However, the criminal disputes do not necessarily restrict themselves to only two parties to the dispute in terms of their scope, consequences and effect. The criminal acts tend to cast their effect and consequences even upon the society at large. Therefore, the law prescribes punishment, severe punishments and the extreme punishments, including death penalty for criminal acts.”

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15. Learned counsel representing the State has not been able to controvert the aforesaid facts and the position of law as laid down in the aforesaid judgment.

16. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned orders dated 12.04.2022 (Annexure P-12) & 11.07.2022 (Annexure P-15) vide which the proclamation proceeding were initiated against petitioner No.1 and he was declared as proclaimed person, respectively, as well as FIR No.1901 dated 18.11.2022 under Section 174-A of IPC registered at Police Station Shivaji Nagar, Gurugram District Gurugram, Haryana along with all consequential proceedings emanating therefrom, are hereby set aside, subject to payment of Rs.10,000/- as costs to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

17. The receipt of payment of costs imposed must be presented before the learned trial Court. The learned Court below is directed to verify the payment of said costs.

(HARPREET SINGH BRAR)
JUDGE

23.01.2025*Neha*

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No