

(2012) 08 P&H CK 0290

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M-9238 of 2012 (O and M)

Yuvraj

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Aug. 22, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482, 82
- Penal Code, 1860 (IPC) - Section 114, 34, 406, 420, 452

Hon'ble Judges: Vijender Singh Malik, J

Bench: Single Bench

Advocate: S.K. Garg Narwana, with Mr. Ravinder Singh Sheokand, for the Appellant; Vikas Malik, AAG, Haryana, for the State, for the Respondent

Final Decision: Allowed

Judgement

Vijender Singh Malik, J.

Status reports filed in the above mentioned cases, today in the court, are taken on record. Yuvraj and Rajender, the two petitioners, by way of above mentioned two petitions brought under the provisions of section 482 Cr.P.C. seek quashing of order dated 20.10.2011 passed by learned Judicial Magistrate Ist Class, Rohtak declaring the petitioners as absconders in a case titled State Vs. Yuvraj registered by way of FIR No. 342 dated 10.8.2008 at Police Station Civil Lines, Rohtak for an offence punishable under sections 114, 406, 420, 452, 506 read with section 34 of Indian Penal Code.

2. The order challenged in the two petitions is the common order vide which both the petitioners, named, Yuvraj and Rajender have been declared as absconders. They are, however, having different annexure numbers i.e., Annexure P5 in the petition brought by Yuvraj and Annexure P8 in the petition brought by Rajender. The said order would be, however, referred to as Annexure P5 hereinafter.

3. Status report in the case has been filed by Mr. Tula Ram, Deputy Superintendent of Police, City Rohtak where it is mentioned that the case had been got registered on the complaint of Chand Singh Ahlawat in which the accused, Surinder Singh was granted bail by the court of Sessions Judge, Rohtak vide order dated 22.9.2008 and that on submission of the challan in the court, the trial court has admitted him to regular bail. It is further mentioned that the petitioners, Yuvraj and Rajender were also granted the concession of anticipatory bail by this Court and after submission of challan against the accused, the trial court has admitted them to regular bail. It is also mentioned that now, the case is fixed for framing of charge.

4. Learned senior counsel for the petitioners has submitted that the petitioners were living in Kolkata and Agartala (Tripura) and proclamation has been effected in Rohtak. According to him, this proclamation is not valid in the eyes of law and the petitioners, on the basis of the said proclamation, could not be declared absconders. He has further submitted that the proclamation is required by law to be read out at a conspicuous place in the area where the accused has been residing. According to him, this requirement of law has also not been complied with in this case and, therefore, the impugned order dated 20.10.2011 is bad.

5. Learned senior counsel for the petitioners place reliance on a decision of this Court in Balwant Singh Vs. The State, 1960 PLR 189, where it was held that the proclamation was not duly published if it was not publicly read in any conspicuous place in the village in which the accused ordinarily resided. He has also placed reliance on a decision of Hon"ble Delhi High Court in Sunil Kumar Vs. State, 2002 (1) RCR (Crl.) 119 where the accused was residing in a foreign country and no attempt was made to serve him through Ministry of External Affairs, the order issuing proclamation was set-aside. Another case cited before me is Satinder Singh Vs. The State of U.T., Chandigarh and another 2011 (2) R.C.R. (Crl.) 89, where it has been held that if a person is not accused of the offence specified under sub-section (4) of section 82 Cr.P.C., he cannot be declared a proclaimed offender.

6. Learned State counsel has reiterated the facts submitted in the status reports.

7. The petitioners have not been declared proclaimed offenders vide the impugned order. However, to even declare a person absconder, the ordinary process should have been issued to him and the proclamation is required to be issued in a situation where the court has reason to believe that the said person has absconded or is concealing himself. If the petitioners have been residing in Kolkata and Agartala and admittedly there is no process issued to them on their address of Kolkata and Agartala, the above referred satisfaction could not be arrived at by the court passing the impugned order and, therefore, there was no occasion for the court to even issue proclamation. For this simple reason, the order of issuing proclamation against the petitioners would itself be held to be bad and the impugned order where the court went a step ahead to declare the petitioners absconders cannot be sustained. Moreover, the petitioners have already appeared before the court and

have been admitted to regular bail and they are facing trial. Consequently, I find the impugned order declaring the petitioners to be absconders to be bad in the eyes of law. The petitions are, therefore, allowed and the impugned order dated 20.10.2011 is set-aside.