

IN THE COURT OF Ms.AMAN SHARMA, PCS, (UID NO. PB0292)
ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
PATHANKOT.

PBPO030034502023



IPC Challan No. : 67 of 2023
Date of Institution : 17.05.2023
Date of registration: 17.05.2023
CIS No. : CHI/234/2023
CNR No. PBPO030034502023
UID No.PB0292
Decided on : 18.10.2023

State	Versus	Gurpreet Singh son of late Sh.Amrik Singh resident of village and Post Office Jandwal, Tehsil and District Pathankot.
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...Accused.

F.I.R. No. 142, dated 06.10.2021
U/s 174-A of IPC.
P.S. Division No.1, Pathankot.

Present: Sh.Arun Kumar APP for the State.
Accused on bail represented by Sh.Ravinder Bhandari
Advocate.

JUDGMENT:

1. Accused aforesaid has been sent to face trial by the Officer Incharge of Police Station, Division No.1, Pathankot for having committed an offence under sections 174-A of Indian Penal Code, 1860 (*hereinafter referred as the IPC*).

2. Briefly, the facts as averred by the prosecution are that in a case titled as State Bank of India versus Gurpreet Singh, complaint under Section 138 of Negotiable Instrument Act (*hereinafter to be referred as the NI Act*), Police Station, Division No.1, Pathankot, accused was declared proclaimed person vide order dated 09.09.2021 after following due procedure by the Court of the then Learned Judicial Magistrate Ist Class, Pathankot. In pursuance of proclamation, case against the accused was registered under Section 174-A of IPC. Accused was arrested. Statements of witnesses were recorded and after completion of investigation challan against the accused was presented in the Court under section 174-A IPC.

3. On appearance of accused in court, copies of challan were supplied to him free of costs, as envisaged under section 207 of the Code of Criminal Procedure, 1973 (*here in after referred as Cr.P.C.*).

4. Finding a *prima-facie* case for offence punishable under sections under section 174-A IPC having been made out against the accused, charge was framed against the accused accordingly. Accused pleaded not guilty to the charge and claimed trial.

5. In order to prove its case, prosecution got examined following witnesses:-

PW1	Akshay Kumar, Ahlmad who proved order of Court.
PW2	ASI Naresh Pal, witness to memos.

PW3	ASI Surinder Pal, Investigating officer of the case, who described the manner of investigation.
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Thereafter learned APP for the State closed evidence on behalf of prosecution.

6. After closure of prosecution evidence, statement of accused under section 313 Cr.P.C. was recorded and in order to afford him an opportunity to explain the incriminating evidence appearing against him, all the incriminating evidence was put to him to which he denied and pleaded innocence and false implication.

7. No defence evidence intended to be lead.

8. I have heard learned APP for the State and learned counsel for accused and gone through the evidence on file.

9. Learned APP for the state argued that prosecution has been able to prove the charge against the accused beyond shadow of reasonable doubt. He contended that accused facing trial absented from the court during trial in case titled as “State Bank of India Vs. Gurpreet Singh” of the NI Act. When Court failed to secure his presence despite issuance of warrants and was satisfied that accused was avoiding his arrest, his proclamation was issued under Section 82 of Criminal Procedure Code. Despite publication of said proclamation, accused failed to appear in the Court and thereby committed offence punishable under Section 174-A of Indian Penal Code. Thus, he was declared Proclaimed Person/absconder vide order dated 09.09.2021 by the Court of the then Learned Judicial

Magistrate Ist Class, Pathankot. He urged that prosecution evidence inspires confidence as the same is without any blemish and is acceptable. As such, accused is liable to be convicted.

10. On the other hand, learned defence counsel for accused argued that accused has been falsely implicated in the present case. The accused is a law abiding citizen and has not committed any disobedience of the orders of the Court intentionally. In fact he was having certain personal difficulties due to which he could not appear in court and was declared proclaimed person. He asserted that prosecution has failed to prove the case against the accused beyond shadow of reasonable doubt. As such, accused is liable to be acquitted.

11. I have given the thoughtful consideration to the rival submissions made by the learned APP for the State as well as defence counsel and have perused the material on the file carefully.

12. From the arguments and material on record, the following points of determination arises:-

1. Whether in case titled as 'State Bank of India Vs. Gurpreet Singh State Vs. Gurnam Singh' of the NI Act Court of the then Learned Judicial Magistrate Ist Class, Pathankot issued proclamation under Section 82 Cr.P.C. but accused failed to appear in the court and he was declared proclaimed person?
2. Whether the prosecution has been able to prove the case against the accused beyond shadow of reasonable doubt?

Points no.1&2.

13. Case of the prosecution is that in case titled as ‘State Bank of India Vs. Gurpreet Singh’ of the NI Act Court of the then Learned Judicial Magistrate Ist Class, Pathankot issued proclamation under Section 82 Cr.P.C. but accused failed to appear in the court and he was declared proclaimed person.

14. In order to prove its case prosecution has examined PW1 Akshay Kumar Criminal Ahlmad, who stated that on 09.09.2021 he was posted as Additional Ahlmad in the Court of Sh.Hem Amrit Mahi the then Learned Judicial Magistrate Ist Class, Pathankot. On the same day, as per the direction of the learned Court, he forwarded copy of order dated 09.09.2021 to SHO, Police Station, Division No.1, Pathankot. He proved on record copy of the order dated 04.05.2022 as Ex.P1.

15. PW3 ASI Surinder Pal, Investigating Officer of the case described manner of investigation and stated that on 06.10.2021 he was posted as ASI at Police Station, Division No.1, Pathankt. He further stated that on the basis of P.O. order Ex.P1, FIR Ex.P2 was registered by ASI Balvir Singh. He stated that on 08.05.2023 he arrested accused Gurpreet Singh @ Labha son of Amrik Singh resident of Janwal District, Pathankot after obtaining his production warrants from the Court. He proved on record memo of arrest cum intimation of accused Ex.P3. He also prepared memo of personal search of accused Ex.P4. Memos were witnessed by ASI Naresh Kumar and constable Ranjit Singh.

16. PW2 ASI Naresh Kumar, witness to memo duly corroborated the statement made by PW3 ASI Surinder Pal and stated on similar lines.

17. In the case in hand, accused has been charged for having committed offence punishable under Section 174-A of Indian Penal Code for having failed to appear in court in pursuance of written proclamation issued under Section 82 (1) of Criminal Procedure Code. From the order of this Court Ex.P1 proved by PW-1 Akshay Kumar, it has been duly established that accused facing trial namely Gurpreet Singh was summoned as accused by this Court and he failed to appear before the Court despite proclamation issued by the Court. Thus, he was declared proclaimed person by the Learned Predecessor of this Court vide order Ex.P1. As proved from the statement of PW- 1 Akshay Kumar the investigating agency came into motion on receipt of directions given in order of proclamation Ex.P1.

18. As the offence committed by the accused was to be established only from the order of Court, there was nothing to be investigated except collection of said order and arrest of accused which was duly done by investigating officer. In these circumstances objection regarding non collection of some other irrelevant documents and non conducting of fair investigation does not arise. However, in case the accused was of the opinion that there were certain relevant documents left by investigating officer which could have established his innocence, he could have proved the same during defence evidence. However, the

accused has even failed to disclose which were those relevant documents.

19. The defence plea that accused was having personal difficulty cannot be considered as first of all said difficulty has not been explained. Moreover, he has not lead any evidence to convince the Court that such personal difficulty was not self invited and was beyond his control. Accused has also failed to bring to the notice of the Court any such defect in the proclamation. Moreover, there is a presumption regarding due publication of proclamation in favour of prosecution under Section 82(3) of Criminal Procedure Code.

20. From the above discussion, this court is of the considered opinion that prosecution has duly proved the guilt of the accused for having failed to appear in the Court in response to proclamation issued under Section 82 Criminal Procedure Code and thus he stands convicted for the offence punishable under Section 174-A of Indian Penal Code. Let the convict be heard on the question of sentence.

Pronounced in open Court.
Dated: 18.10.2023

#Balbir Singh Stenographer#

(Aman Sharma) PCS
Addl.Chief Judicial Magistrate,
Pathankot. (UID NO. PB0292)
Dated:18.10.2023

ORDER OF SENTENCE

Present: Convict Gurpreet Singh in custody assisted by
Sh.Ravinder Bhandari Advocate.
Sh.Arun Kumar APP for the State.

1. I have heard convict Gurpreet Singh and his counsel and have

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heard learned APP on the question of sentence. Convict prayed for taking lenient view in the matter of sentence being poor person and only bread earner of his family. Keeping in view the facts and circumstances of the case, gravity and nature of offence, this court does not deem it a fit case, where convict can be given benefit of probation.

2. Keeping in view the facts and circumstances of the case, age of convict and gravity of offence, accused is convicted for the imprisonment already undergone by him. Case property, if any, be disposed of as per rules subject to the result of appeal or revision, if any. Bail bonds and surety bonds, if any, stands discharged. Copy of judgment be provided to convict free of costs. File be consigned to the record room after due compliance.

Pronounced in open court.
Dated: 18.10.2023
(Balbir Singh Stenographer)

(Aman Sharma), PCS,
Addl.Chief Judicial Magistrate,
Pathankot.UID/PB0292
Dated: 18.10.2023