
(2018) 09 SHI CK 0024

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition No. 423 of 2018

Anil Kumar Budhiraja

APPELLANT

Vs

State of Himachal Pradesh & Anr.

RESPONDENT

Date of Decision : 18-09-2018

Acts Referred:

Indian Penal Code, 1860 — Section 304B

Citation : (2018) 09 SHI CK 0024

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : N.S. Chandel, Dheeraj K. Vashishat, Hemant Vaid

Final Decision : Disposed Off

Judgement

Sureshwar Thakur, J

1. The instant petition is directed, against, the orders pronounced, on, 28.8.2018, by the learned Chief Judicial Magistrate, Solan, in, Case No. 272/3 of

2016, whereunder the petitionersâ?? application for seeking exemption, from his personal appearance, stood rejected, and, also therein, he stood

declared, a, proclaimed offender.

2. The reasonsâ?? assigned in the petition, for, the petitioner, not, recording his personal appearance before the learned trial Magistrate

concerned,are, (a) anchored upon his address mentioned in the complaint, not, bearing compatibility with his address reflected, alongwith his name, in,

the instant petition, whereas, the latter address being his correct address,

(b) his suffering judicial custody, in respect of, an offence constituted, under, Section 304Â?B, of, the Indian Penal Code,

(c) wherefrom, a, contention is, reared, that in the NBWs hence remaining

unexecuted upon him, rather, the petitioner, not, intentionally avoiding, in, ensuring their execution, upon, him.

3. However, the aforesaid contention is per se flimsy, as earlier thereto, the petitioner herein had recorded his appearance, before the learned trial

Magistrate, (i) despite issuance of a valid proclamation, yet, the petitioner herein omitting, to record his personal appearance before the learned trial

magistrate. In aftermath the impugned order does not suffer from any perversity or absurdity, and, hence the impugned order is maintained.

4. Nonetheless, when the petitioner, has, recorded his personal appearance before this Court, and, has rendered a statement on oath, duly reduced into

writing and signed by him, with disclosures therein, qua, his undertaking to record his personal appearance, before the learned trial Magistrate

concerned, and, also with a disclosure occurring therein, qua, his thereafter, continuously recording his personal appearance, therebefore, unless,

severe personal constraints, rather preclude him, to, make his personal appearance therebefore.

Consequently, hence in the interest of justice, this Court, is constrained, to, direct the petitioner to record his personal appearance, before the learned

trial Magistrate, on 28.9.2018. Also, in the interest of justice, the learned trial Magistrate concerned, is, directed, to, upto then not direct, for, issuance

of any coercive process, for, ensuring the personal appearance of the petitioner, before her.

In view of above, the present petition stands disposed of, so also pending applications, if any. The parties are directed to appear before the learned

Magistrate concerned, on 28.9.2018. However, liberty reserved to the learned Magistrate concerned, to, upon the petitioner's breaching, the,

undertaking furnished, before this Court, to, hence thereafter proceed, in accordance with law, against him. 18th September, 2018 (Sureshwar

Thakur), (kck) Judge. Statement of Sh. Anil Kumar Budhiraja, son of Sh. Harbans Lal, resident of House No. 270, Sector 46AA, Chandigarh. On

oath: 18th September, 2018 Stated that I shall record my personal appearance before the learned trial Magistrate concerned, on 28.9.2018, and, shall

furnish the bail bonds. I shall also continue to record my personal appearance, except severe personal constraints, for precluding my appearance,

before the learned trial Magistrate concerned, in respect whereof, through an

application, I shall seek my exemption for personal appearance.