

(2021) 12 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 625 Of 2021

Surinder Kumar Verma

APPELLANT

Vs

State Of H.P And Others

RESPONDENT

Date of Decision : 01-12-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 82, 311, 482, 446

Citation : (2021) 12 SHI CK 0002

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Ravi Tanta, Sudhir Bhatnagar, Desh Raj Thakur, Narinder Thakur

Final Decision : Allowed

Judgement

Sandeep Sharma, J

1. Having regard to the nature of order proposed to be passed in the instant case, this court sees no necessity to issue notice to the respondent No.2/ complainant. Mr. Sudhir Bhatnagar, learned Additional Advocate General, while appearing on behalf of the respondent-State fairly states that one opportunity can be granted to the petitioner to cause his presence before learned trial Court.

2. By way of instant petition filed under S.482 CrPC, challenge has been laid to orders dated 18.8.2021 and 23.9.2021, passed by learned Chief Judicial Magistrate, Shimla in case No. 9003796/2013, (796-3 of 14/13) titled Adesh Kumar Jain vs. Surender Kumar, whereby learned court below, besides initiating separate proceedings under S.446 CrPC against the accused as well as his surety, also ordered for issuance of proclamation against the petitioner in terms of S.82 CrPC, to be executed on or before 30.10.2021.

3. Having heard learned counsel for the petitioner and perused material available on record vis-à-vis the reasoning assigned in the impugned orders, this court finds that since despite sufficient opportunity, accused and his surety failed to put appearance before learned trial Court, it had no option but to proceed

against the petitioner-accused and his surety under S. 446 CrPC and for declaring accused proclaimed offender under S.82 CrPC.

4. Learned counsel for the petitioner-accused, while inviting attention of this court to the copy of cause-list of learned Chief Judicial Magistrate, Shimla dated 30.7.2021, states that on 30.7.2021, case was adjourned for 9.9.2021, and as such, there was no occasion for him to cause presence of the accused on 18.8.2021, when learned court below having taken note of absence of the petitioner-accused, ordered initiation of proceedings under S.446 CrPC against the petitioner-accused and his surety.

5. Though, careful perusal of cause list dated 30.7.2021 (Annexure P-5), reveals that on 30.7.2021, case was adjourned to 9.9.2021, but this court cannot lose sight of the fact that on 30.7.2021, order was passed in the presence of learned counsel representing the accused, who besides filing an application for exemption on behalf of accused, also filed an application under S.311 CrPC for recalling the witness and court specifically recorded that the matter be listed on 18.8.2021. There is every possibility that the Reader of the court below may have recorded date wrongly in the cause-list (Annexure P - 5). Once, order dated 30.7.2021 was passed in the presence of learned counsel for the petitioner, this court has reasons to believe and presume that it was in his knowledge that the matter has been ordered to be listed on 18.8.2021. Since on 18. 8.2021, petitioner failed to put appearance before learned Court below, it had no option but to initiate proceedings under S.446 CrPC against the accused for forfeiture of surety bond.

6. Be that as it may, since the petitioner is ready and willing to cause his presence before learned court below on a date to be fixed by this Court, this court without going into correctness of impugned orders deems it fit to grant one opportunity to the petitioner to cause his presence before learned court below, subject to payment of costs of Rs. 10,000/- payable to the complainant. Ordered accordingly.

7. Consequently, the present petition is allowed and orders dated 18. 8.2021 and 23.9.2021 are quashed. Petitioner is directed to appear before learned court below on 7.12.2021, on which date, learned court below, after recording his presence, may consider his prayer for dropping the proclamation proceedings. However, it is made clear that in case the accused fails to appear before learned court below, on the aforesaid date, orders dated 18.8.2021 and 23.9.2021 would come into operation and police would be at liberty to arrest the petitioner, so that he is produced before learned court below. Learned counsel for the petitioner undertakes to apprise with regard to passing of instant order, enabling it to do the needful well within stipulated time.

8. Petition stands disposed of in the afore terms, alongwith all pending applications.

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