

201-2

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

CRM-M-8995 of 2015

Date of decision: August 18, 2015

Manjit Kaur

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Prateek Gupta, Advocate
for the petitioner.

Mr. P.S. Ghuman, Addl. AG Punjab.

SABINA, J

Petitioner has filed this petition challenging the order dated 06.01.2010, whereby, she was declared a proclaimed offender.

Learned counsel for the petitioner has submitted that the petitioner is a British Passport holder. In fact, petitioner had left for England before the registration of the FIR and has not visited India thereafter. Petitioner never received any intimation qua the registration of FIR against her. Hence, the petitioner had no occasion to evade the process of Court. Thus, the order, whereby, petitioner was declared a proclaimed offender, was liable to be set aside.

Learned State counsel, on the other hand has opposed the petition and has submitted that despite issuance of proclamation, petitioner had failed to surrender before the

trial Court and thus, had been rightly declared a proclaimed offender.

Proclamation for an absconding person is issued under Section 82 of the Code of Criminal Procedure, 1973 ('Cr. P.C.' for short) and the same reads as under:-

“82. Proclamation for person absconding-

(1) If Any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specific place and at a specified time not less than thirty days from the date of publishing such proclamation

(2) The proclamation shall be published as follows—

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or home-stead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides

(3) A statement in writing by the Court issuing

the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of subsection (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day”

Section 83 Cr. P.C. Provides for attachment of the property of the absconding person.

Impugned order (Annexure P-5) reads as under:-

“Today the case was fixed for appearance of accused Manjit Kaur W/o Piara Singh, R/o Opp. Gurudwara Shishganj Sahib, Anandpur Sahib. Period of 30 days has been elapsed but the accused Manjit Kaur has not come present in the court today despite calling the case for several times. As such, accused Manjit Kaur is declared proclaimed offender. Necessary intimation be sent to the SHO concerned for entering the name of the accused Manjit Kaur in Proclaimed Offenders register. Papers be consigned to the record room and be again taken up as and when the accused will be arrested and produced before the Court.”

The case of the petitioner is that she is residing in England and is a British Passport holder. In fact, petitioner had visited India on 23.03.2009. FIR, in the present case was registered on 14.07.2009. Thus, the petitioner had left India before the registration of the FIR. It is the case of the petitioner that she has not visited India after the registration of the FIR. Trial Court, before declaring the petitioner a

proclaimed offender, made no effort to effect service on her address in England. Petitioner cannot be presumed to know the proclamation issued in India as she was residing in England. In the facts and circumstances of the present case, the impugned order (Annexure P-5) whereby petitioner was declared a proclaimed offender is liable to be set aside.

Accordingly, this petition is allowed. Impugned order 06.01.2010, whereby, petitioner was declared a proclaimed offender, is set aside.

**(SABINA)
JUDGE**

August 18, 2015
mahavir