

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

**CRM-M No. 22134 of 2015
Date of decision: 01.12.2016**

Ujjal Deep Singh & Others

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Gautam Dutt, Advocate
for the petitioners.

Mr. Sharad Kumar Yadav, DAG, Haryana.

JAISHREE THAKUR, J. (Oral)

The instant petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of the order dated 16.02.2015 passed by learned Judicial Magistrate First Class, Faridabad in case FIR No. 290 dated 10.12.2013, registered under Sections 498-A and 406 of the Indian Penal Code at Police Station Faridabad NIT, District Faridabad, wherein the petitioners have been declared as proclaimed offenders.

Counsel for the petitioners contends that the impugned order *per se* is not sustainable as the petitioners herein are the residents of the United States of America (*for short 'USA'*) and this fact is reflected in the FIR itself. It is contended that a perusal of zimini orders would reflect that no proper service was effected upon the petitioners herein. It is further contended that an application for issuance of proclamation against the accused was moved and by an order dated 23.12.2014, the proclamation under Sections 82/83 Cr.P.C. was ordered to be issued for 29.01.2015.

On 29.01.2015, the Court noted that the proclamation issued against the accused Ujjal Deep Singh, Gurpreet Kaur and Mandheraj Singh, petitioners herein, had been received served. However, the petitioners herein were residents of USA at that time and this proclamation was never published or served upon them and thus any proclamation done here in India would not be valid and, therefore, the impugned order declaring the petitioners as proclaimed offenders ought to be set aside. Counsel for the petitioners relies upon the judgment rendered in **CRM-M No. 9035 of 2006** titled as **Vikram Batra vs. Sandeep Kakkar & Another** decided on 17.02.2006, wherein, in a similar situation the accused were ordered to be summoned by the trial Court who were residing in USA. The learned Single Bench held that the Court has to be satisfied from all circumstances that the person is absconding before publication under Section 82 Cr.P.C. can be issued while further holding that steps have to be taken to serve through the Ministry of External Affairs. A similar view has been taken in **Kashmir Ram vs. State of Punjab, 2008 (4) Law Herald 3430**.

Counsel for the State submits that the impugned order is in accordance with law and the proceedings have been initiated to extradite the petitioners.

I have heard learned counsel for the parties. In the instant case, there is nothing on record to show that the Magistrate has come to the conclusion that the persons are absconding. Moreover, a perusal of the zimini orders does not reflect that an attempt had been made to serve the summons upon the petitioners, who are admittedly the residents of USA, through the Ministry of External Affairs. Therefore, the proclamation if

made in India would not be of any relevance. For proper service, proclamation had to be issued through the Ministry of External Affairs at their known address which does not appear to have been done in the instant case.

Therefore, in view of the facts of the present case, this Court is of the opinion that proclamation under Sections 82/83 Cr.P.C. was not done in accordance with law and, therefore, there was no effective service. Hence, the present petition is allowed and the impugned order dated 16.02.2015 declaring the petitioners as proclaimed offenders is hereby set aside.

The petition stands disposed of.

December 01, 2016
Ansari

(JAISHREE THAKUR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>