

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

**Crl. Misc. No.M-7788 of 2009
Date of decision : 22.03.2016**

Mandeep Singh and others

.....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. H.S. Thiara, Advocate
for the petitioners.

Mr. VPS Sidhu, AAG, Punjab.

Mr. Amaninder Preet, Advocate
for respondent no.2.

ANITA CHAUDHRY, J(ORAL)

The petitioners seek quashing of order dated 06.09.2008 (Annexure P-1), vide which the petitioners were declared proclaimed offenders.

It is necessary to give the backdrop. An FIR was registered on the complaint of Baljit Kaur, wife of petitioner no.1. FIR No. 41 dated 11.03.2008 was registered under Section 420, 498A, 34 IPC at Police Station Banga, District Nawanshahar. Mandeep Singh and Baljit Kaur were married in 2002. A complaint was given to the police in 2007. The petitioners were declared proclaimed offenders on 06.09.2008.

The petitioners have pleaded that they were known persons and had been regularly visiting their village and no written proclamation was served upon them and wrong facts were placed before the Court. It was pleaded that they had their house in Rahipa, District Nawanshahar and their relatives were residing in the village and the complainant was aware of their address and were never served. It was pleaded that they had been divorced. She had deliberately not given the UK address. It was pleaded that petitioner no.1 was in the country from April, 2004 to January, 2007, petitioner no.2 was in India from January, 2007 to October, 2007 and petitioner no.3 was in India on 24.10.2008. It was pleaded that the complainant had got a divorce on 15.10.2011 and they had placed the copy of divorce decree (Annexure P-2). It was pleaded that the divorce decree was passed in the presence of complainant and all disputes had been settled and a sum of 4,000 pounds was paid in terms of the settlement. It was pleaded that the complainant was then working in U.K. and the FIR had been lodged just to extract more money.

The State in its reply pleaded that processes were issued for securing the presence of the petitioners through ordinary process and otherwise and the petitioners evaded service and consequently resort to the provisions of Section 82 Cr.P.C. was made and despite proclamation, they had failed to appear and were declared proclaimed offenders. It was pleaded that the petitioners were aware of the criminal proceedings.

Baljit Kaur-respondent no.2 in her reply had submitted that the police had filed the challan against all the three petitioners and they were summoned by the trial Court but they failed to appear and after adopting due procedure, the petitioners were declared proclaimed offenders. It was pleaded that petitioners no.2 & 3 returned to India after the registration of the case and they knew about the pendency of the case. It was pleaded that the petitioners were notorious and the petitioners had abandoned respondent no.2 after one month of marriage. It was pleaded that so long as she remained in UK, she never received any communication from the petitioners or from the Courts in England. It was pleaded that documents Annexure P-2 does not show her presence or her Attorney's presence. It was pleaded that her address indicated in the order was not her address nor she had lived at Southall and petitioner no.1 had played fraud. It was pleaded that she was then living in Birmingham (UK) and petitioner no.1 was a resident of Glasgow, Scotland and the distance between the two places was 12 hours by road. It was pleaded that she was trying to find out the details regarding the decree (if any) passed by the Sheriff's Court of Scotland.

I have heard both the sides.

The counsel appearing for the petitioners contended that the petitioners were living in Scotland and the complainant knew that they were not residing in India and the order declaring them proclaimed offenders was wrong. It was contended that the petitioners

had come to the country and they were asked to appear before the Court and they had appeared before the trial Court but there was no further directions and they were orally told that they were not required to appear again. It was urged that the marriage between petitioner no.1 and respondent no.2 had ended and a decree of divorce had been passed in UK. It was urged that vide order dated 09.07.2009, they were asked to surrender before the trial Court and there were directions that they were not to be taken into custody and the look-out order was stayed and the orders of the Court had been complied with. It was urged that no attempt was made to get the service effected through the Ministry of External Affairs nor any publication was effected in the newspaper and the complainant knew that they were living in Scotland and they were not absconders. It was urged that provisions of Section 82 Cr.P.C. are mandatory and had not been complied with and they could not be declared proclaimed offenders and the order be set aside. Reliance was placed upon ***Sunil Kumar Vs. State 2002(1) HLR 62, Abdul Rehman & Anr. Vs. State of Rajasthan 207 CriLJ 3113, Chokha @ Pukhraj Vs. State of Rajasthan 2005 CriLJ 4708, Devendra Singh Nevi @ Debu Vs. State of U.P. and another 1994 CriLJ 1783, Mehar Singh & Anr. Vs. State of Punjab 2010 CriLJ 409, Dilbagh Singh @ Sonu Vs. State of Punjab 2015 (3) Law Herald 2381 and Kashmir Ram Vs. State of Punjab 2008(4) Law Herald 3430.***

On the other hand, the submission on behalf of the complainant was that the petitioners did not array the wife as a party and they had approached the Court and they filed the application and

were impleaded as a party. It was urged that the conduct of the petitioners needs a reference and the various orders passed by this Court would show their conduct. It was urged that the petitioners were directed to appear before the Court below on 03.08.2009 but they failed to appear before the Court and this fact was brought to the notice of this Court and is noted in the order dated 21.12.2009 and it was months later that the counsel had stated that they had surrendered before the trial Court and it was noted that the petitioners had not filed any bail application and the counsel for petitioners had sought time to seek instructions and thereafter, oral and written requests were made and successive adjournments were taken and the Court had asked the petitioners to surrender and the counsel for petitioners sought time to seek instructions and they had been seeking adjournments only. It was urged that the trial Court was directed to adjourn the case beyond the date fixed in this Court and the trial Court was at liberty to proceed with the trial but since the petitioners were declared proclaimed offenders, the trial could not proceed and they were not appearing and they left the country without the permission of the Court. It was urged that in September, 2014 it had been stated that the petitioners would be coming to India by the end of the year and the petitioners were directed to produce the tickets and directions were given to the petitioners to appear before the trial Court on 19.11.2014 and interim bail was granted but they failed to appear and the counsel for the petitioners moved an application for correction of the order and that application was

dismissed but the petitioners did not return. It was urged that when the matter was argued on 14.01.2016, again the counsel had stated that he would seek instructions and the counsel was given time to contact the petitioner and he informed this Court that the petitioners needed time to make arrangements and time was given and they were directed to make arrangement and book tickets and in case they failed to do so, they were directed to deposit Rs.5 lacs. It was urged that neither the tickets were purchased nor they had returned nor the amount was deposited and in this view of the matter, they were not entitled to any relief.

It would be necessary to refer to some of the orders passed in this case, which *read as under:-*

09.07.2009

"After arguing some time, learned counsel for the petitioners states that the petitioners are to surrender before the trial Court.

Petitioners are directed to surrender before the trial Court on 3.8.2009 but they are not to be taken into custody.

Operation of look out order shall remain stayed till next date of hearing.

Adjourned to 12.8.2009."

08.12.2009

"The Counsel for the complainant has submitted that the order dated 9.7.2009 has not been complied with by the petitioners and a short date be given. The prayer is allowed.

In the interest of justice, adjourned to 21.12.2009."

21.12.2009

"Learned counsel for the petitioner states that the order dated 9.7.2009 passed by this Court has since been complied with. In order to substantiate the same, copy of the order dated 3.8.2009 passed by Judicial Magistrate Ist Class, Nawanshahar has been placed on record.

To come up for arguments on 3.2.2010."

29.7.2010

"Learned counsel for the petitioners states that in pursuance to the order dated 9.7.2009, the petitioners had surrendered before the trial Court. The said order has been placed on record. It is apparent from the said order that the petitioners have not yet filed bail application.

Learned counsel for the petitioners prays for time to seek instructions.

Adjourned to 16.9.2010."

01.03.2011

"Learned counsel for the petitioners prays for time to seek instructions that as to when the petitioners are ready to surrender before the trial Court

Adjourned to 22.7.2011."

25.10.2013

"Learned counsel for the parties state that there are chances of amicable settlement between the parties.

Post before the Mediation and Conciliation Centre of this Court on 13.11.2013.

Parties to appear before the said Centre on the adjourned date."

13.08.2014

"This is a petition for quashing of the impugned order (Annexure P-1) vide which the petitioners were declared proclaimed offender. The petitioners were directed to appear before the trial Court vide order dated 09.07.2009. The petitioners appeared before the trial Court but thereafter, failed to appear subsequently. The trial Court adjourned the hearing awaiting the appearance of the petitioners who left the country and are presently abroad. Vide order dated 01.06.2012 liberty was granted to the trial Court to proceed with the trial but the proceedings in the trial Court could not be taken up on account of absence of the petitioners.

A hearing can be given to the petitioners only if they are inclined to come back to the country.

Learned counsel for the petitioners prays for time to seek instructions.

On his request, adjourned to 04.09.2014."

Order dated 04.09.2014 reads as under:-

"Learned counsel for the petitioner states that petitioner would be coming at the end of October, 2014 and he intends to appear before the trial Court.

Adjourned to 30.9.2014.

The petitioner would produce the copy of the ticket on the next date of hearing."

06.10.2014

"Learned counsel for the petitioner states that Mandeep Singh has also booked his ticket and would be arriving in India on 16.11.2014. He further states that Shinder Singh and Jagir Kaur are arriving in India in October and all of them intend to appear before the trial Court.

This petition had been filed by the petitioners for quashing of the order dated 06.09.2008 vide which they were declared Proclaimed Offender. This petition was filed in the year 2009. Vide order dated 09.07.2009, the petitioners were directed to surrender before the trial Court on 03.08.2009 and were also directed not to be taken into custody and operation of look out order was stayed till the next date of hearing.

Learned counsel for respondents pointed out that in compliance of the order dated 09.07.2009 the petitioners had appeared but thereafter failed to appear and because of the protection granted to them the matter had been adjourned for a number of years. It was urged that the trial Court though was asked to proceed with the trial but in the absence of the petitioners nothing could have moved.

The petitioners have misused the concession granted to them and have violated the order, but I would give one more chance to the petitioners since an undertaking has been given that the petitioners would appear before the trial Court. Jagir Kaur and Shinder Singh are stated to be arriving in India on 28.10.2014, they are directed to appear before the trial Court on 03.11.2014. They would move an application for getting the file restored from the record room. They would be admitted to interim bail only till the next date of hearing.

Mandeep Singh would be arriving in India on 16.11.2014, he would appear before the trial Court on 19.11.2014. Mandeep Singh would also be admitted to interim bail only till the next date of hearing.

The petitioners would not leave the country without prior permission of this Court. They would also deposit their passports with the trial Court and would face the trial. The trial Court would expedite the proceedings.

Now to come up on 28.11.2014."

18.11.2014

"Learned counsel for the applicant-petitioner states that there is a mistake in the order dated 06.10.2014, passed by this Court.

Vide order dated 06.10.2014, it had been stated on behalf of the petitioners that Jagir Kaur and Shinder Singh would be arriving in India on 28.10.2014. On such assurance, they were directed to appear before the trial Court on 03.11.2014 and interim protection was ordered.

Learned State counsel states that Jagir Kaur and Shinder Singh did not appear before the trial Court and absent report has been sent to the Court.

On 06.10.2014, learned counsel for the petitioner had also stated that Mandeep Singh would be arriving in India on 16.11.2014 and he would appear before the trial Court on 19.11.2014 but today he states that he is not aware if Mandeep Singh has arrived in India or not.

There is no mistake in the order dated 06.10.2014. If the petitioners are aggrieved with the order, they can challenge the same. No further order needs to be made in favour of the petitioners considering their conduct.

The application stands disposed of."

14.01.2016

"This is a petition for quashing of the impugned order (Annexure P-1) vide which the petitioners were declared proclaimed offender.

Arguments had commenced and it has been pointed out by counsel for respondent No. 2 that the petitioners were directed to surrender before the trial Court but there was an order that they would not be taken into custody and operation of look out order had been stayed on 09.07.2009.

Learned counsel for the petitioners states

that the petitioners appeared before the trial Court on 03.08.2009 and the order is available on record which would show that the trial Court had adjourned the case for awaiting further orders and there was no further order to appear.

Perusal of the order in this petition show that on 29.07.2010 it was noted that the petitioners had not filed any bail application. Time was sought to seek instructions. The case thereafter was adjourned to seek instructions.

It was stated after a number of adjournments that the petitioners were ready to surrender before the trial Court. The case meantime was being adjourned for over one year.

I also find that on 01.06.2012 it had been clarified that there was no order of stay and the trial Court was directed to proceed with the trial.

Learned State counsel informs that since accused were not appearing there was no question of any progress in the trial.

The petitioners are presently abroad. I find that this Court had been informed in September 2014 that the petitioners would come to India towards the end of October 2014. In order to help the parties to resolve their issues some more time was given. Copy of the tickets was also placed on record and interim protection was granted. It had been intimated that Mandeep Singh was to arrive in India on 16.11.2014. It was undertaken that he would appear before the trial Court on 19.11.2014. He failed to appear. Subsequently an application had been made that there was a mistake in the order dated 06.10.2014. That application was disposed of clarifying that there was no mistake. Today after the arguments by the petitioners were completed the counsel was asked whether the petitioners were still ready to come to India. He left the Court to make the call. The counsel has come back and states that they need some time to make arrangements and travel to

India.

Learned State counsel submits that twice opportunity has been granted but except for seeking adjournments nothing has changed since 2012.

This petition is pending since 2009. Precious time of the Court has been wasted over the years.

The case is adjourned to 02.02.2016 giving them one more opportunity though enough time has been granted.

Learned counsel for the petitioners would convey to the petitioners to ask them to respond through email incorporating the undertaking that they would come to India. They would also purchase their tickets meanwhile and the same shall be placed on record failing which the petitioners would deposit Rs. 5 lacs. "

The above would show the manner in which the case has proceeded. The petitioner had sought time to appear and enough time was granted to them to return. This petition was filed in 2009. The first direction was given in July, 2009. Even after six years, the petitioners have not returned. They have made a mockery of the concession granted. They have misused the concession and it tantamounts to misusing the process. Each time the matter was posted for arguments, it was stated that the petitioners would return. The counsel requested for more time to seek instructions. When the case was fixed for final hearing on 14.01.2016 and arguments on behalf of the petitioners had been heard, the petitioners were again given an opportunity to return. The counsel had left the Court to make a call and had informed that the petitioners needed time to make travel arrangements.

A specific order was passed on that day that the petitioners were to respond through e-mail and send their undertaking that they would come to India, in the meantime they were to purchase their tickets. The case was adjourned for a fortnight to enable them to make arrangements. It was also ordered that in case they failed to come this time, they would have to deposit Rs.5 lacs. On the adjourned hearing an affidavit was filed by one Mohan Singh Malhi, stated to be the Attorney of the petitioners. Copy of the power of attorney was not placed on record. It did not contain any undertaking. The sum of Rs.5 lacs was not deposited. The tickets were not purchased. No undertaking was given.

The petitioners were declared proclaimed offenders. They were directed to appear before the trial Court. Without even submitting an application for bail, they returned to United Kingdom. For the last 6 years adjournments are being taken. These proceedings are an abuse of the process of law. Precious time of the Court has been wasted. The petitioners would deposit Rs.5 lacs as ordered earlier within a month.

The petition is dismissed.

22.03.2016
sunil

(ANITA CHAUDHRY)
JUDGE