

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

Crl. Misc. M-46163 of 2016 (O&M)
Date of Decision: 23.12.2016

Gursharan Singh @ Gursharanjit Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. B.S. Baath, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

Heard.

Notice of motion.

At this stage, Mr. S.S. Gill, Advocate puts in appearance on behalf of respondent No.2-complainant and files the power of attorney, which is taken on record.

This is a petition filed under Section 482 Cr.P.C. for quashing of order dated 19.02.2013, whereby, the petitioner has been declared as a proclaimed offender in case FIR No.24 dated 03.03.2008, under Sections 307, 313, 376, 406, 498-A, 511, 120-B of Indian Penal Code, registered at Police Station Khamano, District Fatehgarh Sahib.

In brief, the facts are that respondent No.2-complainant alleged

in the FIR that she solemnized her marriage with Harjeet Singh son of Bhag Singh, resident of Ranma, according to Sikh rites and rituals. The petitioner herein is the brother of husband of the complainant. Several disputes arose between respondent No.2-complainant and her husband, which led to the lodging of the aforesaid FIR on 03.03.2008, under Sections 307, 313, 376, 406, 498-A, 511, 120-B of Indian Penal Code, however, after investigation, challan under Sections 498-A, 354 of Indian Penal Code was presented. The petitioner herein was not challaned, but was summoned on a application moved by the prosecution under Section 319 Cr.P.C. The petitioner was found innocent in the enquiry and he went abroad and settled there, therefore, was not available when warrants were issued after summoning him, to secure his presence. Learned counsel for the petitioner contends that zimini orders dated 17.11.2012 also noted the fact that the petitioner had gone abroad. It is contended that before declaring him as a proclaimed offender, provisions of Section 82(2)(i)(a) Cr.P.C. had been followed and the order declaring him as a proclaimed offender is not sustainable in the eyes of law. It is further argued that during the pendency of the proceedings in the trial court, a compromise came to be effected between the parties on 20.10.2014 i.e. after declaring the petitioner herein as a proclaimed offender, wherein, respondent No.2-complainant has joined her husband Harjeet Singh and is residing happily with him along with their son. It is prayed that since the FIR has been quashed on the basis of compromise by this High Court itself in Criminal Misc. No.M-770 of 2015, the order declaring him as a proclaimed offender ought to be set aside.

Learned counsel appearing on behalf of respondent No.2-

complainant admits to the factum of compromise having been arrived at between the complainant and her husband i.e. brother of the petitioner.

I have heard learned counsel for the parties.

It is not in dispute that the parties are residing happily together. Perusal of the zimini orders shows that these are not in consonance with Section 82 Cr.P.C. insofar as the fact that the trial court was aware that the petitioner was not residing at his last known address and was residing abroad. As per Section 82 (2)(ii) Cr.P.C., the court if it thinks fit, is to direct a copy of the proclamation be published in a daily newspaper circulating in the place, in which, such person ordinarily resides. In other words, it was for the court to order publication in a newspaper having circulation, where the petitioner herein was known to reside, which has not been done in the instant case. Thus, there was no adequate publication for summoning him before declaring him as a proclaimed offender.

In view of the fact that the matter has been compromised and no objection to the order declaring him as a proclaimed offender being set aside and that the impugned order is unsustainable, having been not followed the procedures as prescribed under Section 82 Cr.P.C., this petition stands allowed and accordingly, the order under challenge is hereby set aside with all consequential proceedings arising therefrom.

December 23, 2016
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No