

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

1. CRM-M No.1197 of 2017

Paramjit Kaur @ Pammi

... Petitioner

Versus

State of Punjab

... Respondent

2. CRM-M No.13901 of 2017

Banto

... Petitioner

Versus

State of Punjab

... Respondent

Date of decision: 7th September, 2017

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. P.S. Sekhon and Mr. Tribhawan Singla, Advocates
for the petitioners.

Mr. H.S. Grewal, Addl. Advocate General, Punjab
for the respondent/State.

FATEH DEEP SINGH, J.

These two petitions, both under Section 482 Cr.P.C., the first by petitioner Paramjit Kaur @ Pammi and the second by petitioner Banto, having arisen in the same very case are thus being taken up together for disposal to facilitate brevity.

The brief allegations that are undisputedly put forth by the learned State counsel Mr. H.S. Grewal, Addl. Advocate General, Punjab as well as learned counsel for the petitioners Mr. P.S. Sekhon and

Mr. Tribhawan Singla, Advocates are that the present case was got registered by way of FIR No.63 dated 06.07.2011 under Sections 356/379 IPC at Police Station Baghapurana, District Moga on the statement of one Jaspal Kaur. While she was present on Baghapurana - Nihal Singh Wala road in the area of village Chananwala turn around 4.00 p.m., a white Maruti car came being driven by a young man along with whom four aged ladies got down and the latter accosted the complainant and offered her lift, who accepted it and thereafter it is alleged that the accused forcibly took away gold Gajra (chain) and other ornaments from the person of the complainant leading to registration of the present case.

Upon completion of investigations, challan was presented against the accused Mukhtiar Kaur, Channi, Surjeet Kaur and the present petitioners Paramjit Kaur alias Pammi and Banto; the latter having, as is claimed, not appeared at the time of presentation of challan, leading to passing of orders dated 03.12.2012 (Annexure P2) whereby learned Judicial Magistrate 1st Class, Moga declared the petitioners to be proclaimed offenders and that is how they have come up before this Court seeking quashment of the same.

Upon hearing arguments of the petitioner side as well as learned State counsel, it could not be displaced by learned State counsel nor is otherwise in the records of the courts below that the accused

petitioners were never apprehended at any point of time till the challan was presented and it was upon presentation of challan the Court had initiated proceedings under Sections 81/82 of the Cr.P.C. and as a consequence of which, order (Annexure P2) was passed declaring both the petitioners as proclaimed offenders.

A similar question of law had come up before this Court in the case of **‘Avtar Singh v. Harinder Singh Kang’ (CRM-M No.12547 of 2016, decided on 23.11.2016)** where this Court had exhaustively and comprehensively considered the eventualities where such an order necessitates intervention by this Court in the exercise of inherent powers under Section 482 Cr.P.C. As is there and is not disputed, the petitioners Paramjit Kaur alias Pammi and Banto were unaware of the pendency of the FIR, presentation of challan and the very proceedings under Sections 81/82 of the Cr.P.C., are in itself on a shaky wicket. Case of both the petitioners is well covered by the ratio whereby this Court has held to the effect that there should be legitimate recourse to law and that procedure prescribed in part ‘C’ of Chapter ‘VI’ of the Code of Criminal Procedure needs to be followed by way of different processes including proclamation by way of publication as well and it is consequent upon an eventuality when a person fails to comply with the proclamation issued under Section 82(1) of the Cr.P.C. in not appearing at the time,

place and date as detailed in the proclamation, would lead to criminal consequences by way of registration of case under Section 174A IPC. The Court below has failed to appreciate the stand of the petitioners when they moved this Court, the failure of due service of proclamation upon them and thus, consequent upon their arrest on 18.11.2016 and though as has been contended by learned State counsel Mr. H.S. Grewal, Addl. Advocate General, Punjab, they have remained away from the Court for about 4 years but there being social and substantial cause for being unaware of the pendency of the criminal proceedings and issuance of proclamation against them, leading to declaration of the petitioners to be proclaimed offenders by being declared so and that it being a case where there has been miscarriage of justice creating an exceptional circumstance on account of this bona fide lack of knowledge of the petitioners of the pendency of criminal case and subsequent proceedings and the case of the petitioners is well covered by the eventualities laid down in **Avtar Singh's case** (ibid) necessitates this Court to exercise its inherent powers by resort to Section 482 Cr.P.C. thereby setting aside orders dated 03.12.2012 (Annexure P2) whereby the petitioners have been declared as proclaimed offenders. However, it is made clear that any observation made herein would by no means prejudice the proceedings under Section 174A IPC against the petitioners which have already been

initiated, though the same can be well considered by the Court at the time of final conclusion of the same.

Both the present petitions stand allowed in those terms.
Records be sent back immediately.

(FATEH DEEP SINGH)
JUDGE

September 7, 2017
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No