

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

**CRM-M-2060-2016 (O&M)
Date of Decision: 08.09.2017**

Sukhwinder Kaur & Another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Abhishek Bajaj, Advocate
for the petitioners.

Mr. M. S. Nagra, AAG, Punjab.

Mr. Pankaj Bhardwaj, Advocate
for the complainant.

JAISHREE THAKUR, J.

1. This instant petition has been filed seeking to quash order dated 21.10.2014 (Annexure P-11) passed by the Court of learned Additional Chief Judicial Magistrate, Ferozepur, whereby proclamation proceedings initiated against the petitioners were revived as well as order dated 04.12.2015 (Annexure P-12) by which the petitioners were declared proclaimed persons in FIR No. 35 dated 28.01.2014, under Sections 307, 342, 406, 498-A, 506 and 120-B IPC, Police Station Sadar, Ferozepur.

2. There is a checkered history of bitter litigation between the parties and to understand the same it would be necessary to refer to the sequence of events which took place leading up to the revival of proclamation proceedings and subsequent declaration as proclaimed

persons.

3. A marriage was solemnized between the son of the petitioners No. 1 and 2 and Amandeep Kaur on 25.11.2013. Due to the breakdown in the matrimonial relationship between Tarandeep Singh and Amandeep Kaur, FIR No. 35 dated 28.01.2014, under Sections 307, 342, 406, 498-A, 506, 120-B IPC, was registered at Police Station Sadar Ferozepur. The son of the petitioners filed CWP No. 2368 of 2014 before this Court praying for the matter to be investigated by the CBI. The matter was referred to mediation, however, the same did not yield any positive result. The writ petition was disposed of since the investigation stood transferred to a new officer, namely, Mr. S. Rahul, IPS. Against the disposal of the writ petition, Tarandeep Singh son of the petitioners preferred an ***LPA No. 630 of 2014*** expressing his apprehension that the father of the complainant was well connected in the District and the change of Investigating Officer would not result in an independent investigation. The LPA was disposed of by calling upon the Director General of Police, Punjab to look into the matter and to ensure that an independent investigation was carried out on the allegations alleged in the FIR. After the disposal of the LPA, an application was preferred therein alleging that the local police had not stopped interfering in the matter. By an interim order dated 11.07.2014, the Hon'ble Division Bench directed that an SIT be constituted which would work under the supervision of ADGP (Crime) and if the ADGP (Crime) was of the view that any member of the SIT needed to be replaced, he would be free to do so. Eventually, the LPA was disposed of on 17.07.2014 by directing that all cases *inter-se* between the parties would now be transferred to the SIT and any complaint in future would also be forwarded to the SIT.

4. On 22.07.2014, a challan was presented in FIR No. 35 before the Court at Ferozepur in which the petitioners herein filed for grant of anticipatory bail, which was rejected. Thereafter, they approached this Court by way of **CRM-M No. 23741 of 2014** for grant of anticipatory bail which too was dismissed by order dated 06.10.2014 and SLP was also withdrawn on 24.11.2014. Since the bail application stood dismissed, an application was preferred by the DSP, Kotakpura on 21.10.2014 for reviving the proclamation proceedings that had been initiated against accused Sukhwinder Singh and Sukhwinder Kaur i.e. petitioner No. 1 and petitioner No. 2 herein, in the said FIR. An order came to be passed on the same date reviving the proclamation proceedings. The learned Additional Chief Judicial Magistrate, Ferozepur issued proclamation for 01.12.2014. The copy of the proclamation was pasted and entries were made to that effect on 27.10.2014. The statement of the Process Server was recorded regarding the affixation of the summons for 01.12.2014, the date fixed. On that very date i.e. 01.12.2014, an application was preferred by the petitioners-accused seeking a deferment of the proclamation proceedings which application was taken up for reply and for further proceedings to come up on 05.12.2014. In the meantime, writ petitions were preferred by Tarandeep Singh i.e. Civil Writ Petition No. 23860 of 2014 and Civil Writ Petition No. 23917 of 2014 praying for transfer of investigation as well as cancellation of the challan. By an order dated 02.12.2014, a Division Bench of this Court stayed all proceedings under the complaint case. The writ petitions were eventually withdrawn vide order dated 30.11.2015. Immediately, after the withdrawal of the writ petitions, an application was preferred on behalf of petitioners through a relative, to the Court of Chief Judicial Magistrate, Ferozepur

seeking deferment of the proclamation proceedings against the petitioner with a request to give them 10 days' time to surrender before the Court. However, the said request was not acceded to, noting that anticipatory bail applications had been rejected and that after the withdrawal of the writ petitions from this Court on 30.11.2015, they did not appear before the trial Court. It was opined that petitioners were intentionally delaying the criminal proceedings and thereafter petitioners were declared as proclaimed persons. It is against this order that the instant petition has been filed.

5. The instant petition was taken up on 21.01.2016, wherein it was argued that after the withdrawal of the writ petition on 30.11.2015, the case came up for hearing before the trial Court on 04.12.2015 and a request had been made to give 10 days' time to the petitioners to surrender but in spite of the written request the petitioners were declared as proclaimed persons. It was also urged that no notice had been issued to the parties and the petitioners had been declared proclaimed persons vide order dated 21.01.2014. While noticing contentions as raised, the PO proceedings were kept in abeyance by a coordinate Bench of this Court by order dated 21.01.2016 and the petitioners were directed to surrender before the trial Court. It was further directed that in case petitioners surrendered within a period of three weeks, they were to be released on interim bail subject to their furnishing bail/surety bonds to the satisfaction of the Trial Court.

6. Mr. Kanwaljit Singh, learned Senior counsel appearing on behalf of the petitioners, submits that the allegations made out in the FIR are not sustainable and that the petitioners are not absconding. It is contented that after the CWP Nos. 23860 and 23917 of 2014 were withdrawn on 30.11.2015 (*in which proceedings, the complaint case had*

been stayed on 02.12.2014), an application seeking exemption and deferment of the proclamation proceedings was filed requesting for 10 days' time to surrender before the Court. It is submitted that without addressing the said application, the petitioners herein were declared as proclaimed persons. It is also submitted that pursuant to the order dated 21.01.2016, in these proceedings, the petitioners have appeared and submitted their bail bonds. In fact to show their *bona fides* that they are not likely to abscond, the petitioners would be ready and willing to deposit the title deeds of the house of which they are owners in Sector 10, Chandigarh. Learned Senior counsel also urges that since the petitioners have appeared and submitted their bail bonds, the order of proclamation be rescinded.

7. Per contra, Mr. Pankaj Bhardwaj, learned counsel appearing on behalf of complainant, vehemently urges that the petitioners herein are not entitled to any relief since the interim order dated 21.01.2016 has been obtained fraudulently. It is argued that the learned trial Court rightly declared the petitioners as proclaimed persons on account of fact that despite pasting of notices at their residential addresses, they had not put in appearance for the date they had been summoned i.e. 01.12.2014, instead they only moved an application for deferment of proclamation proceedings. It is argued that even after the writ petitions (*in which stay was granted*) had been dismissed as withdrawn, the petitioners ought to have put in appearance before the trial Court instead of moving an application therein. It is argued that once the petitioners were aware that proceedings were pending for declaring them as proclaimed persons, the question of issuing notices to the parties afresh would not arise.

8. I have heard learned counsel for the parties and with their

assistance have also gone through the pleadings of the case.

9. Admittedly, the petitioners herein had been denied the grant of anticipatory bail in proceedings that had been initiated in FIR No. 35 dated 28.01.2014, under Sections 307, 342, 406, 498-A, 506, 120-B IPC, registered at Police Station Sadar Ferozepur. Even, this Court had refused to interfere in the matter and it was thereafter that proceedings had been initiated to secure their presence. The petitioners were summoned for 01.12.2014 by affixing notices requiring the appearance of the accused. After affixation, a 30 days' period was there for the petitioners to put in an appearance. The petitioners did not put in appearance before the ACJM, Ferozepur on 01.12.2014, on which date statement of the Process Server/Serving Official was recorded. Instead, the petitioners moved an application seeking deferment in the proclamation proceedings in view of the directions issued by the High Court to the Investigation Agency to comply with the ratio of '*Arnesh Kumar Vs. State of Bihar and another*' as well as stating the accused were indisposed. The matter was not argued on that date but was adjourned for filing of reply to the application and for further proceedings to be taken up on 05.12.2014 by which time the proceedings had been stayed in the High Court in ***CWP Nos. 23860 and 23917 of 2014*** on 02.12.2014. After the withdrawal of the writ petitions, an application for an adjournment was again preferred by the petitioners seeking 10 days' time to enable the petitioners to appear, which was dismissed by holding that the petitioners were deliberately delaying the proceedings and the petitioners were declared as proclaimed persons.

10. No doubt, the complaint case had been stayed in CWP No. 23860 of 2014 by the High Court vide order dated 02.12.2014

which stay continued till the matter was dismissed as withdrawn on 30.11.2015 and immediately thereafter on the next date fixed an application was filed seeking 10 days' time to enable the applicants to surrender before the Court which application was dismissed. The argument as raised by the counsel that no notice was given before declaring the petitioners proclaimed persons is not sustainable in view of the fact that the petitioners were already aware that proceedings were pending since an application for deferring the case was preferred on that date itself. It is also worthwhile to notice that when the initial proceedings had been initiated, the petitioners had moved an application on 21.10.2014 seeking an adjournment on the ground that the investigation in terms of the High Court order was incomplete and that the petitioners were unwell. Bail had been rejected as well. On two occasions, when the case was taken up for declaring the petitioners as proclaimed persons, the petitioners had sought adjournments of proceedings instead of appearing.

11. An accused is entitled to a fair trial but such privileges can be availed of only in case he puts in an appearance in Court. An accused has to be produced before the Court to face trial. Presence of an accused before Court of law is *sine qua non* for a fair trial. An accused can be compelled to appear in Court by invoking various provisions as specified in Cr.P.C. and in case all fails, he can be declared a proclaimed offender/person and consequently his property can be attached under Section 83 Cr.P.C. In ***Smt. Deeksha Puri vs State Of Haryan, CRM-M No. 359 of 2012, 2013(1) RCR (Criminal) 159***, this High Court had an occasion to consider Section 82(4) Cr.P.C and the procedure adopted in compelling the accused to appear. It was held as under:-

“One of the most important ingredients of fair trial is that the trial proceedings should be conducted in presence of the accused and he is given a fair opportunity to defend himself. The legal procedure further ensures that in case the accused is found guilty after trial, he should be available in person to receive the sentence passed on him. The presence of the accused at the time of the trial can be ensured by arresting him and detaining him during the period of trial. If the presence of an accused can be reasonably ensured otherwise then his arrest and detention, the law does not deprive him of his liberty. All the provisions regarding issue of summons or of a warrant of arrest; the provisions relating to arrest without warrant, and various provisions, to release an accused on bail are aimed at ensuring the presence of the accused during the trial, without unreasonably depriving him of his liberty.”

12. There is no doubt the petitioners were aware of the proceedings pending before the JMIC and they failed to put in their personal appearance on the date so fixed, choosing to file an application seeking an adjournment in the matter through their relative/counsel which application was rejected leading to an order being passed declaring them as a proclaimed person. Without the presence of the accused before the Court, proceedings will not take place since the presence of an accused before Court of law is *sine qua non* for a fair trial. Now in the instant petition, the petitioners were directed to surrender before the trial Court and furnish their bail bonds which have been duly accepted. The purpose of ensuring the presence of the petitioners accused having been achieved, no useful purpose will be served if the proceedings under challenge that is order declaring them as proclaimed offenders is permitted to continue. The petitioners, if found guilty after the trial, will face the consequences of any alleged action committed by them as

mentioned in the FIR.

13. Therefore in the facts and circumstances of the instant case, the instant criminal miscellaneous petition is allowed and the impugned orders declaring the petitioners as proclaimed persons is hereby set aside. The petitioners having joined the proceedings, the bail stands confirmed.

September 08, 2017
Jyoti3/Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No