

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-25003 of 2016

Date of decision : April 20, 2017

Pardeep Kumar

....Petitioner

versus

State of Punjab

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Harparteek S. Sandhu, Advocate, for the petitioner
Mr. Jasjeet Dhaliwal, DAG, Punjab, for the respondent

Fateh Deep Singh, J. (Oral)

In this petition under section 482 of the Code of Criminal Procedure, petitioner Pardeep Kumar though belonging to village Latala, Tehsil and District Ludhiana but residing in Copenhagen, Denmark through his attorney-cum-sister Smt. Harjit Kaur has sought to impugn order dated 14.11.2014 Annexure P/9 whereby the petitioner has been declared as a proclaimed offender by the court of learned Additional Sessions Judge, Ludhiana.

Heard Mr. Harparteek S. Sandhu, Advocate, for the petitioner and Mr. Jasjeet Dhaliwal, DAG, Punjab, for the respondent/State and perused the records.

The brief facts are that one Narinder Sharma who also happens

to be the father-in-law of the petitioner got registered FIR No. 1 dated 1.1.2010 under sections 308,325,323, 34 IPC with Police Station Raikot, District Ludhiana (Annexure P/1) against un-known persons. The brief allegations were that on 29.12.2009 while the complainant was going from Raikot to Jagraon at about 10.10 AM during his travel in the Punjab Roadways Bus they stopped in the area of village Binjal, two youths aged around 27-28 years and 20-22 years boarded the bus and pulled the complainant out. At that time three other youths were standing outside with iron rods and who assaulted him and on raising raula he was saved. The complainant made a supplementary statement Annexure P/2 that it was Lakhwinder Singh @ Lakhi, Jagmohan Singh @ Raju, Jaspal Singh, Nirmal Singh and Gurvinder Singh who had beaten him at the instance of his son-in-law Pardeep Kumar, the present petitioner. On the same day, one Shiv Kumar son of the complainant has made statement that he is brother-in-law of the present petitioner who had taken him and his cousin to Denmark where they were made to work for 8 hours daily. Though they were served with meals but were not paid anything for their labour and as a consequence of which they were forced to come back from Denmark and the petitioner has caused injuries to his father through Jagpal Singh @ Bagga of village Latala and it is by virtue of statements of PW3 and PW4, the petitioner was named as an accused who was found innocent during inquiry by virtue of inquiry report Annexure P/5 and thus was placed in column no. 2 and the report under section 173 Annexure P5/A. It was on

the recording of statement Annexure P/6 of the prosecution witness that an application under section 319 Cr.P.C. was moved and the court through its orders dated 7.8.2014 Annexure P/7 summoned the present petitioner as an additional accused. It was on 7.10.2014, proclamation Annexure P/8 was issued under section 82 Cr.P.C. whereby the petitioner was required to appear before the Court through Annexure P8/A and it was vide orders dated 14.11.2014, Annexure P/9, the petitioner was declared proclaimed offender. That is how the present petition has come about.

Appreciating the submissions made by counsel for the petitioner and is even otherwise the own story of the complainant that petitioner Pardeep Kumar is son-in-law of the complainant and resides in Copenhagen, Denmark which is a foreign country. The copies of the passports placed on the record through criminal miscellaneous application, the stamp of Immigration authorities shows that the first passport of the petitioner bearing no. A-8958644 has since expired on 05.06.2011 and visa affixed thereon shows that he is resident of Copenhagen, Denmark and has departed from India on 28.9.2009 subsequent to his arrival in Delhi on 01.09.2009, thus, had remained in India during this period. It is reflected from subsequent passport bearing No. J5306336 which was issued on 30.11.2010 by Indian Consular Office in Denmark and is to expire on 29.11.2020 and the entries therein nowhere corroborates the fact that when the proclamation dated 14.11.2014 was issued the petitioner happened to be in that country and therefore, is in itself an established fact that at the time

of issuance of proclamation Annexure P/8 and P/8/A, the petitioner was not ordinary resident of this place (India) and therefore, report dated 5.10.2014 Annexure P/11/A of HC Saminderjit Singh on the non-bailable warrants of arrest Annexure P/11 issued for 7.10.2014 further establishes and corroborates the entries made in the passport relied by the petitioner that much prior to the occurrence the petitioner had come and returned back from this country and which finds mention in Annexure P/11/A on the statement of Jagmel Singh Panch that the petitioner and his family are residing in Denmark. Thus, to the mind of this Court issuance of proclamation under section 82 Cr.P.C. and report made thereon cannot be termed to be due legal and legitimate service of the process of the Court as at that point of time and much prior thereto the petitioner is not ordinarily residing in this country and therefore, cannot be expected to be in knowledge of proclamation of the Court and is certainly illegal order non-est in the eyes of law. Faced with similar situation this Court in **Avtar Singh vs Harminder Singh Kang, CRM-M-12547-2016 decided on 23.11.2016** has held as under:-

“1. Where a person so declared was never within the knowledge of being arrayed as an accused and was never reasonably served with the process of the Court or in a situation where for obvious reasons in spite of being available had sought to be proceeded against on the basis of wrong and imaginary particulars of residency or may be residing abroad when the process against him was

initiated. In such a case this Court is of the opinion that such an order declaring a person so placed in this situation to be having a bona fide case, a genuine grievance of a process having been undertaken against him at his back, contrary to the well enshrined principles of law and therefore, has every right to come to this Court under the aid of Section 482 Cr.P.C. as it is within the ambit where there is an exceptional circumstance to meet the ends of justice.”

Thus in the light of this view of this Court certainly the impugned orders Annexure P/9 declaring the petitioner to be a proclaimed offender needs to be set aside and being exceptional circumstances to meet the ends of justice impels this Court to exercise powers under section 482 Cr.P.C. In the light of the same, the instant petition stands allowed and the order dated 14.11.2014 declaring the petitioner as a proclaimed offender is hereby set aside with all subsequent proceedings.

However, it is made clear that any observation made herein shall not have any impact on the trial of the case and also would not make free the petitioner from his obligation to appear and face trial before the learned trial court and for which the petitioner is well within his right to rake up any defence so available to him.

April 20, 2017
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No