

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

CRM No.M-25041 of 2015 (O&M)

Date of Decision: March 27, 2017

Harbhajan Singh

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Zoravar Singh, Advocate
for the petitioner.

Mr.Sultan Singh Gill, Deputy Advocate General, Punjab
for the respondent-State.

Mr.Ashish Grover, Advocate
for respondent No.2.

INDERJIT SINGH, J.

CRM No.37674 of 2016

The application is allowed, subject to all just exceptions.

Annexures P-7 to P-11 are taken on record.

CRM No.M-25041 of 2015

Petitioner has filed this petition under Section 482 Cr.P.C.
against respondents State of Punjab and Chief Administrator, Jalandhar
Development Authority for quashing the order dated 20.03.2008 passed by
learned Judicial Magistrate Ist Class, Jalandhar and FIR No.119 dated

Adampur and all subsequent proceedings arising therefrom.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

Learned counsel for the petitioner did not press the relief qua quashing of the FIR and wants to withdraw the petition to that extent with the liberty to raise all the points before the trial Court. Therefore, this petition to that extent qua quashing of FIR is dismissed with the liberty aforesaid.

As regarding the order dated 20.03.2008 passed by learned JMIC, Jalandhar, declaring the petitioner as proclaimed offender, I find that learned JMIC, Jalandhar vide order dated 20.03.2008 passed the order that proclamation of accused Harbhajan Singh has already been received back duly served. Statement of serving official HC Mangat Gupta has been recorded, who has proved proclamation form Ex.P1 and his report dated 12.02.2008 as Ex.P2. The Court held that period of 30 days has already been elapsed but accused has failed to appeared, so accused Harbhajan Singh is declared as Proclaimed Offender.

The documents placed on the record shows that vide order dated 04.02.2008, learned JMIC passed the order that non-bailable warrants of accused received back with the report that he is residing in England for the last 18/20 years and has left for abroad. The perusal of this order shows that first of all, there is nothing to show that the present petitioner was knowing the proceedings pending against him. He is residing in England

for the last 18-20 years and has left for abroad, which is report on the non-

bailable warrants. There is also nothing on the record to show that any notice was ever served at the address of the accused in foreign country. There is nothing to show that any warrants have been sent through the Embassy. Therefore, nothing is on the record to show as to how the Court reached to the satisfaction that accused is intentionally concealing himself and avoiding his arrest. The accused petitioner is residing in the foreign country for the last 18-20 years and no warrants have been sent through the Embassy etc. nor any letter etc. was posted at his address in foreign country. Therefore, there is nothing on the record that petitioner was knowing the proceedings and furthermore, concealing himself or avoiding his arrest.

Next I find that vide order dated 04.02.2008, the petitioner was summoned through proclamation for 04.03.2008 and less than 30 days' has been given. In the proclamation the accused is to be given 30 days' time to appear on a specific time and place but that mandatory requirement has not been complied with as proclamation was issued on 04.02.2008 for 04.03.2008. The copy of the proclamation has also been placed on the record, in which direction was given to the accused to appear on 04.03.2008 before the Court i.e. within less than 30 days and this proclamation is stated to have been published on 12.02.2008 as per statement of HC Mangat Gupta, who published the proclamation.

From the perusal of the record, it is clear that mandatory period of 30 days has not been given to the accused while issuing the proclamation and no further proclamation giving clear 30 days has been issued to the accused to appear before the Court. Adjourning the case to complete the period of 30 days is not requirement of law.

In view of the above discussion, I find that the impugned order

dated 20.03.2008 declaring the petitioner as Proclaimed Offender is not as per law and the same is set aside.

Resultantly, present petition stands partly allowed.

March 27, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No