

CRM-M No.34093 of 2016(O&M)

Date of decision: 14.07.2017.

Dharmender and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Aman Dhir, Advocate for
Mr. Kanwal Goyal, Advocate, for the petitioners.

Mr. Naveen Kaushik, Addl. A.G., Haryana.

Mr. Naresh Kumar, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J. (ORAL)

The petitioners, namely, Dharmender, Rajesh and Shashi Kumar, who were the co-accused along with 12 other co-accused in criminal Complaint No.184 of 2010 (Annexure P-1) pending before the Judicial Magistrate 1st Class, Mahendergarh, have filed present petition praying for quashing of the criminal complaint (Annexure P-1) as well as the order dated 26.02.2016 (Annexure P-2), vide which the petitioners were declared proclaimed offender.

On 08.11.2016, learned counsel for the petitioners had withdrawn the petition qua quashing of criminal complaint No.184 of 2010/2012 (Annexure P-1) and notice of motion was issued only for the relief of challenging the order dated 26.02.2016 (Annexure P-2), declaring the petitioners as proclaimed offender.

The Lower Court record has been received. Reply on behalf of Deputy Superintendent of Police, Mahendergarh has already been filed.

Learned counsel for the petitioners has contended that in the complaint, the address of the petitioners has given as residents of village Palli, Tehsil and District Mahendergarh and the proclamation under Sections 82 and 83 Cr.P.C. were also made in village Palli.

Learned counsel for the petitioners has referred to the interim orders passed by the trial Court as well as the summons/warrants issued against the petitioners to contend that the same were issued for the purpose of service in village Palli and as per the report of the chowkidar, they are serving outside and therefore, no efforts were made to serve them on their correct addresses.

Learned counsel for the petitioners further contended that in fact, all the three petitioners are not residing in village Palli. Petitioner No.1 Dharmender is presently working in a private factory and is residing in Tehsil and District, Jhajjar, whereas, petitioner No.2 Rajesh is residing in village Pipli, District Jhunjhunu (Rajasthan) and petitioner No.3 Shashi Kumar, is an employee in Sashastra Seema Bal and is posted in Gangtok, Sikkim. Therefore, the petitioners were never served with notice/warrants despite the fact that on the summons it is reported that they are serving outside. In support the petitioners has referred the provisions of Section 82 of the Cr.P.C. As per Clause (b) of sub-Section (2) of Section 82 Cr.P.C., it is provided that where the Court has reason to believe that any person against whom a warrant has been issued, has absconded or is concealing himself so that the warrants could not be executed, the Court may publish a written proclamation requiring him to appear and the proclamation shall be published in some conspicuous place of the town or village in which such person ordinarily resides.

Learned counsel for the petitioners submits that the petitioners never resided in village Palli and therefore, issuance of summons / warrants by the trial Court to effect service on the petitioners in village Palli is not valid or legal service with in scope of Section 82 Cr.P.C. and therefore, they could not appear before the trial Court.

Learned counsel for the petitioners further relied upon the judgment dated 10.03.2016, to argue that all the other co-accused after facing the trial were acquitted by the trial Court.

After hearing learned counsel for the parties and in view of submissions noted above which are not specifically denied in the reply filed by the State, the order dated 26.02.2016 (Annexure P-2) is hereby quashed. The petitioners are directed to appear before the trial Court on 26.07.2017 and the trial Court is directed to dispose of their bail applications on the same day.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

14.07.2017
Hemlata

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No