

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

Crl. Misc. M-3649 of 2013 (O&M)
Date of Decision: August 23, 2017

Harpreet Singh @ Nat

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. S.S. Chatrath, Advocate
for the petitioner.

Mr. M.S. Nagra, AAG Punjab.

Mr. L.S. Sidhu, Advocate
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

1. This petition has been filed under section 482 Cr.P.C seeking quashing of FIR No.13 dated 08.03.2011, registered under Sections 406, 498-A of Indian Penal Code at Police Station KOT ISE KHAN, District Moga and also order dated 13.08.2012, whereby, the petitioner has been declared a proclaimed offender.

2. In brief, the facts are that the petitioner got married to one Prabhjot Kaur daughter of the complainant on 05.07.2009 as per Sikh rights and ceremonies. They resided in India for a period of 9 months and thereafter left for Canada in the 1st week of April 2010. On 2.6.2010, a complaint was filed by the respondent No. 2, who is the mother of the wife

of the petitioner, wherein it was alleged that her daughter had informed her by telephone that in Canada, she continued to face harassment and physical abuse on account of bringing inadequate dowry. The complaint was looked into by the SP, Moga, who found the allegations to be incorrect. Another complaint in the same nature was again submitted on 31.12.2010 and on the basis of investigation, it was decided to register an FIR against the petitioner Harpreet Singh, under Sections 498A and 406 of Indian Penal Code. In the proceedings that were initiated, the petitioner herein was declared as a proclaimed offender vide order dated 14.7.2012. Aggrieved against the FIR registered against the petitioner and the order dated 14.7.2012, the instant petition has been filed seeking quashing of the same.

3. Learned counsel appearing on behalf of the petitioner raises a threefold argument. Firstly it is contended that order dated 14.7.2012 is not sustainable, as there was non-compliance of Section 82 Cr.P.C. It is contended that mere reading of the contents of the FIR itself would show that he had become a resident of Canada in April 2010 and there was no effective service of the proceedings upon him. The impugned order would reflect that service upon him was effected through pasting of notice at public place near his house and one at the bus stand, which could not be deemed to be effective service, in view of the fact that he was residing in Canada. It is further argued that any offence, if at all made out, would be within the territorial jurisdiction of Canada and not here at Moga. Even though the marriage took place in Moga, but the parties resided for a short duration and thereafter left for Canada in April 2010. To support his argument, counsel for the petitioner places reliance upon a judgment

rendered by the Hon'ble Apex Court in **Harmanpreet Singh Ahluwalia and others vs State of Punjab and others, reported in 2009 (2) RCR (Criminal) 956**. It is also submitted that the parties have already obtained a decree of divorce on 22.6.2012 .

4. Per contra, learned counsel for respondent no 2 argues that the daughter namely Prabhjot Kaur was continuously harassed and physically abused while in Canada for dowry and thus the allegations in the complaint/FIR are sustainable.

5. I have heard the counsel for the parties and have also perused the pleadings.

6. Admittedly, a marriage took place between the petitioner and daughter of respondent No. 2 on 05.07.2009. The parties resided in India till the end of March 2010 and thereafter shifted base to Canada. During that time in India, no such complaint regarding demand of dowry seems to have been made. The 1st complaint that was made was in June 2010, wherein, it was alleged that her daughter informed her by telephone of the demand of dowry and cruelty meted out to her in Canada. This complaint was enquired into and it was found that the allegations are not sustainable. It is only after the 2nd complaint was filed that it was decided to register FIR as against the petitioner on the basis of the 2nd enquiry report, while holding that there was a demand of Rs.10 lakhs or a car made in Canada. Therefore, the offence if any, had been committed in Canada. A similar case came up before the apex court in **Harmanpreet Singh Ahluwalia and others (supra)** wherein, the parties were residing in Canada and FIR was registered

at Jalandhar alleging demand of dowry and misappropriation of dowry articles. The proceedings were quashed holding that the Jalandhar court would have no jurisdiction to entertain the matter. Even otherwise, as per the Punjab Govt. instructions, a second enquiry on the same set of allegations should not be entertained, as has been done in the instant case.

7. A perusal of the order dated 14.07.2012 declaring the petitioner herein as a proclaimed person is also not sustainable. It was well within the knowledge of the complainant and the prosecution that the petitioner was residing in Canada. No attempt seems to have been made to effect service upon him at his known address through the embassy. There is also no publication in the newspaper. Merely by a fixation of the notices at the bus stand and at the public place near his house, could not be deemed to be effective service. There is non-compliance of Section 82 Cr.P.C and therefore, the same is unsustainable and resultantly set-aside.

8. A notice is also taken of the fact that the petitioner and the daughter of the complainant have since bought a decree of divorce as granted to them by the Superior Court in Ontario, Canada. This decree was issued on 22.6.2012, prior to the court declaring the petitioner as a proclaimed person. The 1st enquiry report by the SP, Moga held the allegations to be incorrect. On the same facts, 2nd enquiry was held, on the basis of which the instant FIR has been registered. The 2nd enquiry does not hold out reasons for disagreeing with the 1st enquiry or the changed circumstances leading to the 2nd complaint being filed. Therefore in view of the discussion held above and by relying upon the judgment rendered

Harmanpreet Singh Ahluwalia (supra), this court has no hesitation in allowing the instant petition.

9. Accordingly, the instant petition is allowed and FIR No.13 dated 08.03.2011, registered under Sections 406, 498-A of Indian Penal Code at Police Station KOT ISE KHAN, District Moga and all subsequent proceedings arising out of the same and also order dated 13.08.2012, whereby, the petitioner has been declared a proclaimed offender are hereby quashed.

10. The petition stands allowed.

August 23, 2017

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No