

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

CRM-M No. 3465 of 2017(O&M)

Date of decision: 15.5.2017

Deepak Jagpal and anotherPetitioners

VERSUS

State of Punjab and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.P. Soi, Advocate for the petitioners.

Mr. Mikhail Kad, AAG, Punjab.

REKHA MITTAL, J.

The petitioners have invoked Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') seeking quashing of order dated 01.07.2013 (Annexure P-2) passed in FIR No.81 dated 25.05.2011 under Section 498-A of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station Chherretta, District Amritsar City whereby the petitioners have been declared as proclaimed offenders.

Counsel for the petitioners has submitted that the order declaring the petitioners as proclaimed offenders is liable to be set aside inter alia on the grounds that the petitioners were neither sent any summons on their foreign address nor any proclamation was published at the place where they are ordinarily residing or ever sent by post by the process serving agency or the complainant despite the fact that the complainant herself has given foreign address of the petitioners in the FIR lodged at her instance. It is argued with vehemence that the Court below has not followed the procedure envisaged under Section 82 Cr.P.C.,

therefore, order declaring the petitioners as proclaimed offenders cannot stand the test of judicial scrutiny and liable to be set aside.

Counsel representing the State has contested plea of the petitioners on the premise that maternal grandfather of Deepak Jagpal and father of Jatinder Jagpal knew it very well that a criminal case has been registered vide FIR No.81 dated 25.05.2011 and warrants of arrest have been issued against the petitioners as his statement was recorded by the police official who had gone to execute the warrants of arrest. For this purpose, he has relied upon the documents Annexures R-1 to R-6 appended with the reply.

I have heard counsel for the parties, perused the paper-book particularly the documents relied upon by respondent No.1.

Before proceeding with the submissions made by counsel for the parties, it is pertinent to note that the complainant in her first version given to the police has given address of the petitioners of United Kingdom. Perusal of the documents relied upon by the respondent-State would make it apparent that no effort was made to serve the petitioners at the address given in the FIR. There is nothing to show that summons were ever attempted to be served upon the petitioners through Ministry of External Affairs at United Kingdom. The orders issuing proclamation and declaring the petitioners as proclaimed offenders appear to have been passed without any application of mind. No such satisfaction has been recorded by the Court below that the petitioners are either absconding or concealing themselves justifying issuance of a proclamation under Section 82 Cr.P.C. Indisputably, neither any proclamation was published in a newspaper where the petitioners are ordinarily residing nor such proclamation was sent to the petitioners through any other mode of communication.

In view of the above, it can be safely held that the petitioners were declared as proclaimed offenders in violation of procedure laid down under Section 82 Cr.P.C. I would hasten to add that there is no dispute about settled position in law that “where a power is given to do a certain thing in a certain way, the thing must be done that way or not at all. Other methods of performance are necessarily forbidden. In this context reference can be made to judgment of the Privy Council **Nazir Ahmed Vs. King Emperor, AIR 1936 Privy Council 253.**

For the foregoing reasons, the petition is allowed; order dated 01.07.2013 declaring the petitioners as proclaimed offenders in FIR No.81 dated 25.05.2011 under Section 498-A IPC registered at Police Station Chherretta, District Amritsar City is quashed, leaving the parties to bear their own costs.

MAY 15, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no