

126

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

**CRM-M-3736-2017
Date of Decision :30.03.2017**

Paramjit Singh and Ors.

.....Petitioners

Versus

State of Punjab and Anr.

.....Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Dr. Anmol Rattan Sidhu, Senior Advocate
assisted by Mr. Raghav Gulati and
Mr. Shranav Katyal, Advocate
for the petitioners.

Mr. Jasjeet Dhaliwal, Deputy Advocate General, Punjab
for respondent No.1-State.

FATEH DEEP SINGH, J. (ORAL)

Learned Senior Counsel for the petitioner has made statement withdrawing the reliefs qua Annexures P-1 and P-2 and has insisted on seeking relief whereby he has challenged the orders dated 15.03.2011 (Annexure P-4) declaring the petitioners to be proclaimed offenders. Thus the petition qua these relief stands dismissed as withdrawn.

The petitioners Paramjit Singh, Baljit Singh, Ranjit Kaur Nain, Chuhar Singh and Gurnek Singh, who have been arrayed as accused in case got registered by way of FIR No.92 dated 21.12.2010 under Section 406, 120B and 420 IPC at Police Station Noormehal District Jalandhar have come up before this Court in this petition under Section 482 Cr.P.C. seeking setting aside the orders dated 15.03.2011 (Annexure P-4) whereby all these petitioners have been declared as proclaimed offenders.

The stand of learned counsel for the petitioners is that much prior to the occurrence, registration of the FIR and subsequent thereto the petitioners have never visited India and inspite of the complainant as well as the Investigating Agency being fully aware of their place of ordinary residences as one of the petitioner happens to be permanent resident of United Kingdom whereas remaining petitioners are residing in Canada and has sought to term the order to be illegal, nonest in the eyes of law.

In light of the same there had been total violation of provisions of Section 82 of Cr.P.C. Though, Mr. Jasjeet Dhaliwal, Deputy Advocate General, Punjab has put in appearance on behalf of the State and fairly concedes at the bar that he has not much to offer by way of resistance to this prayer.

After perusing the records of the case and hearing the counsel for the two sides, it is a debatable and sad state of affairs the manner in which the learned Lower Court had gone about carrying on with its judicial functions. Though this Court deprecates such a conduct and the manner in which administration of justice has been put in a bad state but restrains from passing any order against the officer for this total insolence judicial remiss and the conduct. It is well reflected in the orders dated 31.01.2011 which are reproduced as below:-

“ Present: APP for the State.

*NBWs issued against all the accused received back unexecuted with the **report of abroad**. I am satisfied that their presence cannot be procured in ordinary manner. Let, proclamations of these accused be issued for 15.03.2011.*

JMIC. 31.01.11”

The matter was thereafter adjourned to 15.03.2011 when the following order was passed which is the subject matter of challenge:-

“Present: APP for the State.

Proclamations issued against the accused received back duly executed. Statements of serving constable have been recorded. A Statutory period has been elapsed but accused have not come present. Hence accused Paramjit Singh, Baljit Singh, Ranjit Kaur, Chuhan Singh and Gurnek Singh are declared proclaimed offenders and intimation in this regard be sent to P.S. concerned. Allowed to retain these papers in his safe custody till further order.

JMIC.15.03.2011”

Not only this during the course of personally looking at the judicial record of the Court's below it has come to light that not only this it has been even in subsequent orders dated 12.12.2016 similar situation has arisen and inspite of fully aware of what is well elicited on the records and reflective therefrom the learned Judicial Magistrate has gone about thus committing another default by issuing proclamation under Section 82 of Cr.P.C. thereby all moved contrary to the instructions contained in letter No.18857 Genl.(4) dated 29.05.2010 and thus passed another order on 04.01.2017 which needs to be reproduced and is as below:-

“Present: Complainant with counsel Sh.

N.K.Bhmabi adv

Proclamation through publication issued against the accused 1 to 6 received back duly effected. But accused failed to come present today in the court. Period of 30 days not elapsed. Now to come up on

04.02.2017 for awaiting presence of accused.

Dt. 04.01.2017

(Akbar Khan) PCS

JMIC/Phillaur”

Thereafter for these obvious reasons further proceedings have been put to hold are well illustrative of the manner of judicial functioning of the Court below. The manner in which the learned Magistrate has proceeded too is contrary and in utter violation of the statutory requirements as enshrined under Section 82 as well as 83 of Cr.P.C. This Court in a similar situation has expressed view in ***CRM-M-12547-2016 decided on 23.11.2016 titled as Avtar Singh vs. Harminder Singh Kang*** and this situation is fully covered by the ratio in question. Since the petitioners at the time of the occurrence were living abroad which too was brought to the knowledge of the Court and thus certainly the orders declaring them to be proclaimed offenders or absconders to the mind of this Court are highly uncalled for legally unsound and illegal, void, *ab initio* by all means. Without feeling the necessity to advert further on to the merits, such functioning of the courts below needs to be streamlined to ensure that a poor litigant is not unnecessarily put to such harassment by knocking at the doors of the Courts by such a casual approach of the Court's below.

In the light of the same the impugned orders and subsequent orders passed by the learned Judicial Magistrate are hereby set aside.

The present petition stands allowed with liberty to the petitioners to take further recourse to law if so advised.

The learned District and Sessions Judge concerned to ensure the presiding officers are made well conversant with such requirements.

Records be sent back.

(FATEH DEEP SINGH)
JUDGE

March 30, 2017

Sunil Devi

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No