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

**CRM-M No.42609 of 2014
Date of Decision: 08.02.2017**

NARINDER KOHLI AND ORS.

.....Petitioners

Vs

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Rishma Verma, Advocate
for the petitioners.

Ms. Rimplejeet Kaur, A.A.G., Punjab.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioners have assailed order dated 07.08.2014 (Annexure P-2) vide which they were declared as proclaimed persons in terms of Section 82(1) Cr.P.C. in FIR No.241 dated 24.08.2013 registered under Sections 420, 465, 467, 468, 471, 120-B IPC at Police Station Civil Line, Amritsar.

[2]. Complainant alleged that on 03.04.2012, the petitioner approached him. Petitioner No.1 executed an agreement to sell in respect of one plot for a sum of Rs.20 lacs. An amount of Rs.10 lacs was received by him and target date for execution and registration of sale deed was fixed on or before 03.02.2013.

Petitioner No.1 demonstrated title of the plot to the complainant by showing him photocopy of the sale deed in order to impress that the property was free from all encumbrances.

[3]. Complainant further alleged that he appeared before the Sub-Registrar on the date fixed along with balance sale consideration. 03.02.2013 being holiday, the complainant appeared on 04.02.2013 and got his presence marked before the Sub-Registrar. The accused party did not turn up to perform their part of obligation. Thereafter, complainant became suspicious and on making enquiries complainant came to know that petitioner No.1 was not the owner of the property. With these allegations of cheating the FIR in question came to be registered.

[4]. The amount of earnest money was not even returned by the petitioners to the complainant Harbans Singh. It has been informed by the learned counsel for the petitioners that complainant Harbans Singh has already expired.

[5]. When the whereabouts of the petitioners were not ascertained and they could not be arrested, a proclamation was ordered to be made and the accused were required to appear before the Court on 28.07.2014 to answer the accusation.

[6]. ASI Harjit Singh, Police Post Durgiana Mandir, Amritsar reported on 28.07.2014 to the Court of Judicial Magistrate Ist

Class, Amritsar that raids have been conducted at the residence of petitioner No.1, but despite that he could not be located and copy of proclamation was pasted outside his house and on the notice board of the Court. Entire proceedings were done on 05.07.2014.

[7]. Vide order dated 28.05.2014, the Chief Judicial Magistrate, Amritsar has recorded the reasons to believe that accused had the knowledge of warrants of arrest, but were absconding in order to avoid execution of warrants of arrest issued against them, therefore, in that context proclamation of the accused was ordered for 28.07.2014.

[8]. The order dated 28.07.2014 passed by the Chief Judicial Magistrate, Amritsar revealed that proclamation against the petitioner was given effect and the statement of serving official was also recorded. Since period of 30 days for appearance of the accused was not complete, therefore, it was adjourned for 07.08.2014 for presence of the accused.

[9]. On 07.08.2014, it was noticed that the period of 30 days had expired, but the accused did not come present in the Court and, therefore, in the said context they were declared to be proclaimed persons in terms of Section 82(1) Cr.P.C.

[10]. Learned counsel for the petitioners by relying upon **Ashok Kumar vs. State of Haryana and another, 2013(4)**

RCR (Criminal) 550 contended that once period of 30 days was not complete as on 28.07.2014, the case was not to be adjourned thereafter in the absence of fresh proclamation. In such eventuality, a fresh proclamation should have been issued as per ratio laid down in the **Ashok Kumar's** case (supra).

[11]. Additionally, learned counsel showed readiness and willingness on the part of the petitioners to surrender before the trial Court to face the prosecution.

[12]. On the other hand, learned State counsel by referring to the order dated 28.05.2014, submitted that a period of two months was actually given while issuing proclamation for 28.07.2014.

[13]. Apparently, in view of order dated 28.07.2014, a catagoric observation was made by the Chief Judicial Magistrate, Amritsar that the period of 30 days was not complete as on 28.07.2014 and thereafter case was adjourned for 07.08.2014.

[14]. At this stage, there is no other material on record to rebut the order dated 28.07.2014 passed by the Chief Judicial Magistrate, Amritsar and the said order was never sought to be clarified even if, it is taken that proclamation was done on 05.07.2014, the very taking up of the case before 30 days on 28.07.2014 would have entailed in issuance of fresh

proclamation for the purposes of declaring the petitioners to be proclaimed persons.

[15]. In view of aforesaid, I deem it appropriate to quash the order dated 07.08.2014. Petition is accordingly allowed. Petitioners are directed to surrender before the trial Court within a period of two weeks from the date of receipt of certified copy of this order. On doing so, the application for regular bail if, filed by the petitioners shall be decided in accordance with law. However till the date of surrender, petitioners shall not be arrested.

February 08, 2017
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(RAJ MOHAN SINGH)
JUDGE

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