

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

CRM-M-29815-2018

Date of decision:-20.7.2018

Amit Kumar

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Ms.G.K. Mann, Advocate
for the petitioner.

H.S. MADAAN, J.(ORAL)

This petition under Section 482 Cr.P.C. seeking quashing of FIR No.5 dated 8.3.2013, under Sections 406, 498-A, 120-B IPC, registered with Police Station Women, Amritsar City, District Amritsar along with all consequential proceedings arising therefrom has been filed by petitioner – Amit Kumar Luthra, resident of Takanini School Road, Takanini, Auckland (New Zealand), through his special power of attorney Manish Luthra, who has been declared proclaimed offender by the Court vide order dated 26.11.2013. The petitioner have sought quashing of that order also.

I have heard learned counsel for the petitioner besides going through the record.

It is submitted that the petitioner was at New Zealand at the time of registration of the FIR.

Be it be so, but the petitioner sitting in New Zealand is seeking quashing of the order declaring him proclaimed offender through his attorney without appearing in the Court and explaining all the circumstances there convincing the Court concerned that the order passed by it is not legal. The maintainability of such a petition through attorney is highly doubtful. A perusal of the impugned order does not reveal any illegality or infirmity therein on the face of it.

Though learned counsel for the petitioner has referred to citation **Jagmal Singh and others Versus State of Haryana and others, 2015(1) R.C.R.(Criminal) 300** to the effect that clear 30 days notice has to be given to the accused to appear in the Court and the case cannot be adjourned to await expiry of 30 days, which according to her has been so done. However, such type of objection should be taken before the Court, which had passed the order declaring the petitioner as proclaimed offender.

In **Mehnga Singh Versus State of Punjab, 2002(2) R.C.R.(Criminal) 501**, it has been observed that when an accused has been declared as proclaimed offender, a petition against the order under Section 482 Cr.P.C. is not maintainable and that the accused should first move the Court which declared him proclaimed offender and even an objection against validity of proclamation is required to be raised in the first instance before the Court which issued the proclamation and that power under Section 482 Cr.P.C. is not to be exercised in favour of a person, who is absconding or avoiding service.

Learned counsel for the petitioner has submitted that in *Mehnga Singh's case(supra)*, the FIR in question had been quashed since the matter had been compromised between the parties and this is so in the present case. However, I find that it was so done observing that the case fell in an exceptional category keeping in view the peculiar facts and circumstances of the case including the fact that the complainant did not appear as a witness and other witnesses also did not support the complainant's version and that the parties had been divorced and had got re-married. Therefore, the present petitioner cannot claim parity and crave for quashing of the FIR along with the consequential proceedings and order declaring him proclaimed offender.

Hence, the petition stands dismissed accordingly.

20.7.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No