

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

246

CRM-M-35627-2017

Date of Decision:12.07.2018

Balbir Singh

.....Petitioner

Versus

Gurdeep Singh and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

**Present: Ms. Gagandeep Grewal, Advocate,
for the petitioner.**

**Mr. Sandeep K. Bokolia, Advocate,
for respondent No.1.**

**Mr. Surinder Pal Singh Tinna, Addl. A.G., Punjab,
for respondent No.2.**

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present petition under Section 482 Cr.P.C. for quashing the order dated 13.09.2011 (Annexure P-5) passed in the complaint titled as “Gurcharan Singh Versus Balbir Singh and others” whereby the petitioner was declared as proclaimed offender. The said complaint has been filed by complainant Gurcharan Singh under Sections 323, 506, 452, 34 IPC in the Court of learned Judicial Magistrate 1st Class, Moga.

Vide order dated 13.09.2011, learned Judicial Magistrate 1st Class, Moga, declared the petitioner as proclaimed offender which is based on the statement of the serving official. As per statement of this official, he affixed the proclamation on the main gate of his house. Vide order dated

04.07.2008, learned trial court had summoned the petitioner through

bailable warrants in the sum of ₹5,000/- with one surety in the like amount for 02.09.2008. The order dated 04.07.2008 reads as under:-

“Summons sent to accused Sukhbir Singh received back with the report of refusal. Summons sent to accused Balbir Singh and Baljit Singh received back unserved. These accused are brothers of accused Nirmal Singh and they are supposed to have knowledge regarding pendency of complaint. Now accused Sukhbir Singh, Balbir Singh and Baljit Singh be summoned through bailable warrants in the sum of ₹5,000/- each with one surety in the like amount each, for 2.9.2008.”

It is thereafter when the petitioner did not appear before the trial court, impugned order dated 13.09.2011 was passed.

Learned counsel for the petitioner has argued that the petitioner was not aware of the proceedings pending against him as he had already left for Canada on 23.10.2008. Though thereafter, he returned to India on 18.01.2012. However, after staying about a month, he had gone back to Canada.

Learned counsel for the petitioner relies upon the entry/immigration stamp on the passport of the petitioner of the relevant time. She further states that merely because other accused are brothers and had the knowledge of the complaint does not *ipso facto* lead to a conclusion that the petitioner had the knowledge of the pending complaint.

On the other hand, learned counsel for respondent No.1 states that the petitioner and other co-accused are brothers, who had the knowledge of the pending complaint. Therefore, it is but presumed that the petitioner must have the knowledge of the complaint but he is avoiding appearance.

I have heard learned counsel for the parties.

The trial court probably has issued service merely on the ground that the other accused, who are brothers of the petitioner had the knowledge and therefore, the petitioner must have knowledge of the complaint. But I do not concur with this proposition. Knowledge of brothers cannot lead to a conclusion that the other brothers had the knowledge of the complaint.

Even otherwise, learned counsel for the petitioner had made a statement that irrespective of the fact that the petitioner has not been served in the case, petitioner is still ready to appear before the trial court to face trial in accordance with law. She further states that one of the accused has been acquitted in this case.

Be that as it may but considering the fact that the petitioner has shown his inclination to appear before the trial court to face the trial in accordance with law and having perused order dated 04.07.2008, this Court comes to the conclusion that the petitioner was not properly served in the case.

Accordingly, the present petition is disposed of with a direction that in case petitioner appears before the trial court within two months from today, the trial court shall admit him on bail subject to furnishing of his adequate bail bonds/surety bonds to its satisfaction.

For two months, the arrest of the petitioner shall remain stayed.

July 12, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No