

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

CRM-M-41687-2016 (O&M)

Decided on: 30.01.2018

Kunda Singh

.... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. H.S. Brar, Advocate
for the petitioner.

Mr. V.G. Jauhar, Sr. DAG, Punjab.

Mr. Aayush Gupta, Advocate,
for respondents No.2 to 4.

RAJ SHEKHAR ATTRI, J (ORAL)

This is a petition filed under Section 482 Cr.P.C. for quashing of order dated 21.11.2015 (Annexure P-5), passed by the Judicial Magistrate 1st Class, Ludhiana, whereby the petitioner was declared proclaimed offender in case FIR No.51 dated 24.05.2015 (Annexure P-1), registered under Section 420 IPC.

The facts necessary for disposal of the present petition are that FIR No.51 dated 24.05.2015 was registered under Section 420 IPC at Police Station Haibowal, District Ludhiana against various persons. However, all the persons were discharged after investigation as no evidence was available against them.

I have heard learned counsel for the parties and gone through the record.

It is the case of the petitioner that he left India on 07.02.2015 and in his absence, FIR was registered on 24.05.2015. The report of the process server transpires that the petitioner was not in India, rather was in Canada. Learned Magistrate ignored this report and no effort was made to affect service in Canada.

Consequently, the petitioner was declared Proclaimed Offender vide order dated 21.11.2015 (Annexure P-5). In **Vallayappa Chettiar v. Alagappa Chettiar**, AIR 1942 Madras 289, it has been observed as under:-

“Before a proclamation under S.87 or an attachment under S.88 can be issued, it must be shown that the accused is absconding or concealing himself so that the warrant for his arrest cannot be executed. Where after the issue of the warrant the Magistrate is informed that the accused had already left India before the warrant was issued, the orders of attachment and proclamation are without jurisdiction inasmuch as since the accused could not have known of the warrant which was issued after he had left India he cannot be said to be willfully absconding knowing of the warrant.”

Similar observations were made in **Gundappa MSR vs. State of Karnataka and another** 1977(1) KantLJ 109.

Petitioner was not in India when impugned order was passed. Therefore, it cannot be said that he willfully absented from the process of the Court. In fact, learned trial Court failed to make any effort to issue notice in accordance with the provisions of law, rather acted in utmost haste. Therefore, the impugned order is not sustainable in the eyes of law and deserves to be set aside.

Consequently, the present petition is allowed. The impugned order dated 21.11.2015 passed by the Judicial Magistrate Ist Class, Ludhiana is set aside.

(**RAJ SHEKHAR ATTRI**)
JUDGE

30.01.2018
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No