

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-5335-2018 (O&M)

Date of decision: 09.07.2018

Harbans Singh

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. K.S.Chahal, Advocate,
for the petitioner.
Ms. Ruchika Sabharwal, AAG, Punjab
Mr. A.S.Salar, Advocate,
for the respondent No.2.

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GURVINDER SINGH GILL, J. (Oral)

The petitioner challenges the order dated 07.12.2015, whereby he was declared proclaimed offender by the trial Court in case FIR No. 22 dated 27.03.2015 under Sections 420/467/468/471/120-B IPC registered at Police Station Hathur, Ludhiana (R) investigated by Police Station NRI, Jagraon, District Ludhiana (Rural).

Learned counsel for the petitioner submits that in fact petitioner was not aware of the proceedings in question, as he is NRI and residing in England since long.

I have heard learned counsel for the petitioner and learned AAG, Punjab.

The impugned order dated 07.12.2015 reads as follows:-

“State Versus Harbans Singh

Present : APP for the Stated Accused absent.

The proclamation under Section 82 Cr.P.C. against the accused Harbans Singh has been received back as duly affected on 05.11.2015. Statement of serving Officer

was also recorded on the same day. Today, period of 30 days has expired from the date of proclamation, but the accused has so far not come present in the Court in the given facts and circumstances, the accused Harbans Singh is declared PO. Intimation in this regard be sent to the concerned Police Station for making entry in the relevant register. File be consigned to the record room and be taken up as and when accused appears in the Court or is apprehended by the police and produced in the Court.

Sd/- Tarunpreet Singh JMIC/Jgn
07.12.2015

The aforesaid proclamation had been issued, vide order dated 31.10.2015, wherein the Court recorded its satisfaction that Harbans Singh had been avoiding service upon him despite knowledge of the case. Order dated 31.10.2015 reads as follows:-

“State Versus Harbans

Present : APP for the State

Accused absent.

NBW's of a accused Harbans Singh have been received back unserved time and again. This Court is satisfied that accused Harbans Singh is avoiding service upon him despite of knowledge of this Case. Therefore, in these circumstances there is no method of procuring presence of accused Harbans Singh except issuing written proclamation. Therefore, now written proclamation be issued for 07.12.2015.

Process Serving Constable is directed to appear in the Court on 05.11.2015 for got recording his statement with regard to due execution of proclamation of accused Harbans Singh.

Sd/- Tarunpreet Singh/JMIC/Jgn.
31.10.2015

The petitioner has annexed a copy of the report of serving constable - Rajinderpal Singh, duly attested by ASI, Bikar Singh, annexed with the present petition as Annexure P-4, which is to the following effect:-

“Sir it is requested that search of accused Harbans Singh S/o Maghar Singh, Jatt, resident of Manuke, now resident of England was conducted by reaching at his residence in the presence of the following. This time it was came to the knowledge that the accused Harbans is living in England since long. Therefore, the warrants could not be served. Therefore, report is submitted regarding non-service.

Sd/- Satnam Singh Panch Sd/- Pritam Singh Gram Panchayat, Manuke, Tehsil Jagraon, District Ludhiana.

Attested Constable Rajinderpal Singh No. 437/PS NRI
Ldh (R) 08.10.15

Attested Bikkar Singh PS NRI Ldh (R)
30.10.15.”

A perusal of the abovesaid report indicates that serving official had specifically reported that search of accused Harbans Singh was conducted and it transpired that accused Harbans Singh is residing in England since long and due to which the warrants could not be served.

In view of the aforesaid position, it is apparent that Harbans Singh was residing in England as a result of which his service was not effected in India. It is not even the case that any other member of his family was contacted to obtain his address of England. In these circumstances, issuance of proclamation cannot be said to be proper. The proclamation proceedings initiated vide order dated 31.10.2015 and subsequent declaration of petitioner as proclaimed offender on 07.12.2015 cannot be said to be justified in the given circumstances. Consequently the impugned order dated 07.12.2015 is hereby set aside.

The accused-petitioner is directed to appear before the trial Courtt within a period of three weeks from today. In case, the petitioner does not appear, the trial Court would proceed against him and take necessary steps in accordance with law.

(GURVINDER SINGH GILL)
JUDGE

July 9, 2018
Pardeep

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