

CRM-M-883 of 2017

[1]

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

CRM-M-883 of 2017

Date of Decision: 25-01-2018

Gulzar Singh

.....Petitioner

v.

Mehar Singh and another

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI

Present: Dr.Anmol Rattan Sidhu, Sr. Advocate with
Mr.Nandan Jindal, Advocate
for the petitioner.

Mr.Sunil Agnihotri, Advocate
for respondent No.1.

Mr.Karanbir Singh, AAG, Punjab
for respondent No.2.

RAJ SHEKHAR ATTRI, J. (ORAL)

This is a petition filed under Section 482 Cr.P.C. for quashing order dated 5.3.2013 (Annexure P3) passed by the Judicial Magistrate Ist Class, Mukerian, whereby the petitioner was declared proclaimed offender in Complaint No.217 dated 31.8.2005, under Sections 302, 148 and 149 IPC.

The facts necessary for disposal of the present petition are that FIR No.43 dated 4.3.2004 was registered under Sections 302, 148, 149 IPC at Police Station Hajipur against various persons. However, all persons

were discharged after investigation as no evidence was available against them.

Thereafter, complainant Mehar Singh–respondent No.1 herein - has filed private Complaint No.217 dated 31.8.2005, in which the petitioner was summoned as an accused. Warrants of arrest were issued qua his arrest but those were returned on 12.12.2012 with the following order:-

“Accused Darshan Singh, Sewa Singh, Lekh Raj and Joginder Singh produced by the Jail authorities. They be again produced on 24.12.20012 for roohanmai.

Accused Joginder Singh the father of the accused Gulzar Singh suffered statement that Gulzar Singh the accused No.2 is his son and he has gone to foreign country i.e. Dubai. In view of the statement of accused Joginder Singh the father of the accused Gulzar Singh, I am satisfied that presence of the accused Gulzar Singh cannot be procured through ordinary process as non-bailable warrants was issued against him. Therefore, proclamation under Section 82 Cr.P.C. against the accused Gulzar Singh be issued for 12.01.2013.”

Thus, it is very much clear that father of the petitioner has disclosed that petitioner has gone to foreign country. This fact was brought to the notice of the Court.

It is the case of the petitioner that he was in Singapore and factum of his absence was brought to the notice of the Court but instead of issuing process under Section 105-A of the Code of Criminal Procedure, he was proceeded under Section 82 Cr.P.C. and declared proclaimed offender.

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

In this case, petitioner has gone lastly to a foreign country (Singapore) on 12.5.2012. In his absence, process was issued vide order

dated on 12.12.2012 and he was in India and thus he was declared proclaimed offender. 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. v. State of Karnataka & Anr.**, 1977(1) KantLJ 109.

Petitioner was not in India when summoning order was passed and process was issued. 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 5.3.2013 passed by the Judicial Magistrate Ist Class, Mukerian is set aside.

(RAJ SHEKHAR ATTRI)
JUDGE

January 25, 2018

RC

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No