

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 5942 of 2018 (O&M)

Date of decision : 30.7.2018

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Nandini Devi and others

.....Petitioners

vs.

State of Punjab and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Rishu Mahajan, Advocate
for the petitioners.

Ms. Samina Dhir, Senior Deputy Advocate General,
Punjab.

Ms. Neha Gupta, Legal Aid Counsel for respondent No.2.

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H. S. Madaan, J.

This petition under Section 482 Cr.P.C. with a prayer for quashing of order dated 15.6.2017 passed by Judicial Magistrate Ist Class, Jalandhar, vide which the petitioners have been declared as proclaimed offenders, in complaint case titled as 'Kusum Pandey vs. Umesh Pandey and others', under Section 406/498-A IPC has been filed by petitioners Nandini Devi, Shanti Devi, Krishan Kumar Pandey and Swami Nath Pandey, all of them being accused in the said case.

Inter alia in the petition it is contended that the complaint in question was filed before Judicial Magistrate, Ist Class, Jalandhar, by Kusum Pandey w/o Umesh Pandey and petitioners were summoned to face trial under Section 498-A IPC vide order dated 22.8.2012; that the petitioners alongwith Umesh Pandey had filed a petition for transfer of case from the Court at Jalandhar to a Court of competent jurisdiction at Lucknow. The Hon'ble Supreme Court while issuing notice had stayed the proceedings. However, the transfer application was dismissed on 27.1.2014. The petitioners had filed a petition for quashing of complaint and ancillary proceedings in the High Court where proceedings were stayed on 14.5.2014 and petitioners were ordered to appear through counsel. The stay was vacated on 25.5.2017. The petitioners were declared proclaimed offenders vide order dated 15.6.2017.

According to the petitioners, they were not aware of the proclaimed offender proceedings. Learned counsel for the petitioners has referred to authority **Dilbagh Singh @ Sonu vs. State of Punjab 2015 (8) RCR (Criminal) 166**, wherein it was observed that when the petitioner was declared as proclaimed offender under Section 82 Cr.P.C., accused should have a fair opportunity to appear and 30 days clear notice is necessary. However, learned State counsel has contended that petitioners were aware of the proceedings against them throughout and no fault can be found with the order declaring them as proclaimed offenders. The order is legal and valid. The State counsel has referred to authority **Raghubir Singh vs. State of Punjab** by a Co-ordinate Bench of this Court in CRM-M-3837-2014, decided

on 10.2.2014, wherein it was observed that if an accused is declared as proclaimed offender after expiry of 30 days, the mere fact that in the proclamation, the next date fixed before the Court was mentioned prior to that, is not sufficient to accept the contention of the Petitioner that he did not get 30 days time to appear in the Court. Even otherwise, as per authority by a Co-ordinate Bench of this Court in **Mehnga Singh vs. State of Punjab 2002 (2) RCR (Criminal) 501**, it was 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 absconder or avoiding service.

Therefore, there is no merit in the petition and the same is dismissed accordingly.

30.7.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No