

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-38241-2016 (O&M)
Date of Decision:- 19.7.2019

Lakhwinder Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. P.S.Ahluwalia, Advocate, for the petitioner.

Ms. Amarjit Kaur Khurana, Sr. DAG, Punjab.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking quashing of order dated 30.9.2005 (Annexure P-4) vide which the petitioner has been declared a 'Proclaimed Offender'.
2. Learned counsel for the petitioner has submitted that although the FIR came to be lodged in December, 1996, wherein he has been declared a 'Proclaimed Offender' on 30.9.2005, but in fact he had been serving Army during the period in question and although the Court concerned had been writing to Army authorities since year 1998 onwards, as would be evident from the zimni orders recorded by the Trial Court but since the Army authorities had never accorded

express permission for prosecution of the petitioner by the Court of learned Judicial Magistrate 1st Class, Amritsar, therefore, the petitioner could not have possibly appeared before the Trial Court more particularly since he was posted in the sensitive border areas.

3. I have heard the learned counsel for the petitioner and have also perused the zimni orders, as reproduced in the petition and order dated 27.8.2004 (Annexure P-3) as well as the impugned order dated 30.9.2005 (Annexure P-4). Some of the initial zimni orders recorded in the year 1998 by the trial Court read as follows:

“All the accused except Lakhwinder Singh on bail.

Accused Lakhwinder Singh is not present. On his behalf, an application for exemption from personal appearance has been moved. Heard. In view of the grounds mentioned in the application personal appearance of the accused Lakhwinder Singh is dispensed with for today.

Today it has been pointed out by the co-accused of accused Lakhwinder Singh that accused Lakhwinder Singh is in service in Army. So option of the commanding officer is requested to be obtained for trial of the accused. Let letter be written to the commanding officer of accused Lakhwinder Singh in this regard. His reply be awaited for 28.5.1998.

6.4.1998

Present: APP for the State.
All the accused except Lakhwinder Singh on bail.
Counsel for accused Lakhwinder Singh.

Accused Lakhwinder Singh is not present today. On his behalf an application for exemption from personal

appearance has been moved. Heard. In view of the grounds mentioned in the application personal appearance of accused Lakhwinder Singh is dispensed with for today.

Option of the Commanding Officer not received back. Ld. Counsel for accused Lakhwinder Singh stated that the company of the accused has been changed from 56 APO to 32 RR D Coy C/o 99 A.P.O. Now option of the commanding Officer be awaited for 18.7.1998. Letter to the Commanding Officer be written at the above mentioned address.

Sd/-

JMIC/28.5.1998

Present: APP
All the accused on bail except Lakhwinder Singh.

Letter from Commanding Officer not received. The Ld. Presiding Officer is availing joining time. For awaiting the same to come upon 1.9.1998.

Sd/-

JMIC(D) Asr. 18/7.98

Present: APP
Accused on bail except Lakhwinder Singh.

Reminder to the Commandant 32 RR D Coy C/o 99 A.P.O. be issued and case adjourned to 6.10.98 for awaiting the letter.

Sd/-

JMIC/1.9.1998”

4. After 1.9.1998, the matter was adjourned on more than two dozen occasions as would be evident from the zimni orders reproduced in

the petition indicating that no response had been received from the Army authorities by the learned Judicial Magistrate 1st Class.

5. Subsequently, the learned Judicial Magistrate 1st Class, Amritsar, on 27.8.2004 passed the following order:

"Present: APP for the State.
All the accused on bail except
Lakhwinder Singh.

Non-bailable warrants of arrest sent again accused Lakhwinder Singh not received back. He was in Army so option from his concerned authorities was sought to conduct his trial in this court or by the Military Court. A report was received that the individual is deployed on operation duties under O.P. Prakaram and he will be sent for being tried by the Civil Court. Vide letter dated 6.2.2002 written by Sh. R. Vardhan, Major, Battery Commander for Commanding Officer, it was stated that accused Lakhwinder Singh is involved in a civil case. Since the case does not pertain to the military, he is not required to be tried by Military Authority. It is further alleged that he has already been acquitted in the same case by the court of Sh. Dhian Singh, Ld. A.S.J. Kapurthala and it is not understood as to why he is being tried again. However, the perusal of the file shows that the present case and the said case lodged against Lakhwinder Singh at Kapurthala are different one. The accused Lakhwinder Singh is being summoned through warrants of arrest. Since none is coming on his behalf. So his bail bond and surety bonds are cancelled and forfeited to the State and he be again summoned through warrants of arrest for 8.11.2004. For proclamation of his service the

detailed position be also written to the said Authority concerning accused Lakhwinder Singh. Notice to his surety u/s 446 of Cr.P.C. be also sent for the said date since 6.4.1998 the option of commanding officer was being sought regarding the trial of the accused Lakhwinder Singh.

Dt: 27.8.2004

Sd/-
Preeti Sahni,
J.M.I.C. Asr.”

6. Pursuant thereto, the petitioner came to be declared a ‘Proclaimed Offender’ vide impugned order dated 30.9.2005 (Annexure P-4).
7. The State, in its reply has not disputed the factual position, as stated in the zimni orders recorded by the trial Court. Learned State counsel on the other hand opposed the petition while submitting that since the copies of warrants and proclamation had been duly pasted outside the residential house of the petitioner, therefore, the petitioner cannot feign ignorance about the pendency of the case and in these circumstances no infirmity can be found in the impugned order.
8. I have considered rival submissions addressed before this Court. Since, it is undisputed that the petitioner was serving Army during the period in question and in fact has remained posted in sensitive border areas at Manipur on Burma Border, Poonch and other Sectors in Jammu and Kashmir upto year 2004 from where he was posted to Jodhpur and remained posted there upto 2007 and there is nothing on record to show that the Army authorities had accorded permission for trial of the petitioner by the Court of learned Judicial Magistrate 1st Class, declaring the petitioner as ‘Proclaimed

Offender', in these circumstances, would not be justified. The petition, as such, is accepted and the impugned order dated 30.9.2005 (Annexure P-4) is hereby set aside.

9. The petitioner is however, directed to appear before the Trial Court and to associate with the proceedings of the trial. The Trial Court shall take necessary steps for expeditious conclusion of the trial.
10. The present petition is accepted accordingly.

July 19, 2019
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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No