

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

CRM-M No.40910 of 2017 (O&M)

Date of decision: 22nd August, 2019

Dalbir Kaur & another

... Petitioners

Versus

State of Punjab & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ruhani Chadha, Advocate for
Mr. Ankur Bansal, Advocate for the petitioners.
Mr. Harbir Sandhu, Assistant Advocate General, Punjab
for respondent No.1/State.
Mr. Ashok Giri, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

What has led to this queer imbroglio calls for recapitulating the historical background of this litigation. From matrimonial alliance between the complainant Puneet Kaur of case bearing FIR No.04 dated 19.01.2017 under Sections 420, 406, 498A IPC pertaining to Police Station Women Cell, Jalandhar (in short, 'the case') and Parampreet Singh son of petitioner No.1 Dalbir Kaur and brother of petitioner No.2 Rumeet Kaur, the present case was got registered after the couple developed matrimonial dispute while residing in Australia. It is consequent upon this, when the present petitioners were declared as proclaimed offenders vide orders dated 16.09.2017, a petition under Section 482 Cr.P.C. bearing CRM-M No.40910 of 2017 was filed

seeking setting aside of the proclamation proceedings and orders dated 16.09.2017.

A coordinate Bench of this Court vide orders dated 28.08.2018, passed the following directions:-

“XXXX XXXX XXXX
XXXX XXXX XXXX

In view of the fact that the petitioners have appeared before the trial Court and have furnished requisite bail bonds and now they are facing the trial, the impugned order dated 16.09.2017 is set aside.

The petition stands disposed of accordingly.”

It is thereafter, an application bearing CRM No.30855 of 2018 was moved seeking recalling of the orders dated 28.08.2018 (ibid) passed by this Court whereby the Coordinate Bench of this Court on 05.02.2019 passed the following orders:-

“XXXX XXXX XXXX
XXXX XXXX XXXX

This application has been supported by an affidavit of the counsel himself. In this background, since the application is supported by an affidavit of the counsel, this Court deems it appropriate to recall the order dated 28.08.2018 and that the same can be heard on merits.

Put up as per roster.

In the meanwhile, interim order would continue.”

It is in the background of this situation, present original petition has come about before this Court for disposal.

The petitioners accused Dalbir Kaur and Rumeet Kaur in precise had claimed that no notice under Section 41-A of the Cr.P.C. was ever issued after registration of the FIR by the police and that both, the complainant and her husband son of the petitioner Dalbir Kaur, are residing in Australia, while they were residents of Amritsar and the FIR was got registered in Jalandhar and they could not, by any means and due diligence, be aware of the pendency of the proceedings, alleging that the entire proceedings have been mala-fidely initiated and carried on deceitfully at their back. It was claimed that no real and effective service of the process upon the petitioners was made and there has been non-adherence to the pre-requisites of Sections 82 and 83 of the Code of Criminal Procedure and thus, the orders declaring the petitioners as proclaimed offenders are illegal, inoperative and need to be set aside.

The respondent State as well as the private respondent filed separate written replies and the crux of both is the same and is to the effect that all the accused were duly served with notice under Section 41A Cr.P.C. It is further claimed by the respondents that the petitioners were fully aware of the complaint filed by the complainant in which they had appeared at the initial inquiry and subsequent to the registration of the FIR, another application was moved by petitioner Dalbir Kaur seeking holding of fresh inquiry and proper investigations as the allegations were false and concocted. The respondents have claimed that

the petitioners had knowingly and intentionally failed to obey the process issued by the Court and that even the principal accused Parampreet Singh did not bother to come to India to appear and has since also been declared a proclaimed offender. Terming each and every averment to be false and frivolous, they sought dismissal of the same.

Upon hearing Mr. Ruhani Chadha, Advocate appearing on behalf of Mr. Ankur Bansal, Advocate for the petitioners; Mr. Harbir Sandhu, Assistant Advocate General, Punjab representing respondent No.1/State and Mr. Ashok Giri, Advocate for respondent No.2 and on perusal of the records.

From what has been detailed above and is well elicited from the records in this case, what emancipates irrefutably and is admitted by the two sides, consequent upon the orders of this Court dated 28.08.2018, the petitioners accused Dalbir Kaur and Rumeet Kaur have been allowed anticipatory bail in this petition in spite of the fact that they had never prayed for such a relief and further that the orders declaring the petitioners as proclaimed offenders through the orders of learned Judicial Magistrate 1st Class dated 16.09.2017 have been set aside. Furthermore, the learned State counsel has fairly conceded that both the petitioners have appeared before the trial Court on the basis of orders dated 31.10.2017 and are facing trial since passing of the orders dated 28.08.2018, and that much of the evidence have since come about. Though this Court is pained over the fact that the fair investigations and recovery of the alleged articles of Istridhan stand scuttled by such a

means, but at the same time what has come about and discussed herein, it would subserve no purpose to adjudicate the very legality of orders dated 16.09.2017 and whether the petitioners are entitled to have the same revoked, as they have virtually been rendered otiose by such an order. Thus, in the light of the same, nothing sustains in this petition for this Court to show indulgence and therefore, the same stands disposed off as such.

(FATEH DEEP SINGH)
JUDGE

August 22, 2019
rps

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