

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

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**CRM-M NO. 8706 of 2019
Date of decision : 18.02.2020**

Kawaldeep

.....Petitioner

Versus

Joginder Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Chetan Kapoor, Advocate
for the petitioner.

Mr. Jarnail Singh Saneta, Advocate
for respondent No. 1.

Mr. Arjun Singh Yadav, Asst.AG Haryana
for respondent No. 2-State.

ARUN KUMAR TYAGI, J. (ORAL)

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C') for quashing of impugned order dated 05.09.2017 passed by learned Judicial Magistrate Ist Class, Kurukshetra in Complaint case No. 250 dated 16.07.2014 titled as Joginder Singh versus Ram Lal and another, whereby the petitioner has been declared as proclaimed person.

Respondent No. 1 filed complaint against the petitioner and Ram Lal regarding alleged commission of offences punishable under Sections 323, 452, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC') on the allegations that on 22.03.2014 at about 10.00 P.M. the petitioner and his co-accused Ram Lal, having a grudge due to verbal exchange with him on that date at about 06.00 P.M. in the fields, trespassed into his house after having

made preparation to cause hurt and caused injuries to him with blunt weapons and threatened to kill him. On non-appearance after summoning, the petitioner was declared proclaimed person by learned Judicial Magistrate Ist Class, Kurukshetra vide impugned order dated 05.09.2017 while on trial Ram Lal was discharged by learned Additional Chief Judicial Magistrate, Kurukshetra vide judgment dated 04.01.2018.

The petitioner has filed the present petition on the averments that the petitioner had already left India for Australia on 24.06.2014 much before filing of the complaint and did not visit even once and the order declaring him as proclaimed person was passed in breach of the prescribed procedure.

On filing of the present petition, the coordinate Bench of this Court, while issuing notice of motion vide order dated 26.02.2019 directed the petitioner to appear before the trial Court on or before 01.04.2019 and directed the trial Court to release him on interim bail on such appearance.

Learned Counsel for the petitioner has submitted that the petitioner could not appear before the trial Court on or before 01.04.2019 in compliance with order dated 26.02.2019 passed by this Court due to his studies and the time for appearance of the petitioner before the trial Court may be extended.

I have heard learned Counsel for the petitioner, learned State Counsel and learned Counsel for the complainant and gone through the relevant record.

In the present case the petitioner has claimed to have gone

to Australia on 24.06.2014 which fact is not disputed by producing any material to contrary. The petitioner was declared as proclaimed person vide order dated 05.09.2017 without effecting service on him at his Australia address in accordance with the prescribed procedure. Proclamation requiring the petitioner to appear on 31.07.2017 was issued by learned Judicial Magistrate Ist Class, Kurukshetra on 18.07.2017 in breach of Section 82 (1) of the Cr.P.C. by not giving mandatory 30 days to the petitioner for his appearance before her and mere adjournment of the case to 05.09.2017 did not cure the defect. The impugned order suffers from material illegality.

It may also be added here that on trial co-accused-Ram Lal was discharged by learned Additional Chief Judicial Magistrate, Kurukshetra vide order dated 04.01.2018.

Even though strictly speaking no reasonable explanation is assigned for non-appearance of the petitioner before the trial Court on or before 01.04.2019 in compliance with order dated 26.02.2019 and no sufficient ground for extension of time for appearance of the petitioner before the trial Court is made out, yet keeping in view the facts and circumstances of the case discussed above, I am of the considered view that the impugned order is liable to be set aside with consequential extension of time for appearance of the petitioner before the trial Court.

Accordingly, the impugned order is set aside and the petitioner is now directed to appear before the trial Court within four weeks from today and on such appearance, he shall be released on bail on furnishing of bail bonds by him to the satisfaction of the trial Court.

The trial Court is further directed to expedite the

proceedings and conclude the trial preferably within three months from the date of appearance of the petitioner before it. However, the trial Court shall be at liberty to seek extension of time if due to facts and circumstances beyond its control it is unable to do so.

The present petition stands disposed of accordingly with the aforesaid directions.

18.02.2020
Rajeev (rvs)

(ARUN KUMAR TYAGI)
JUDGE

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