

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

224

**CRM-M No.17992 of 2020
Date of decision:20.08.2020**

Raj Kumar and another

... Petitioners

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ashok Giri , Advocate for the petitioners.

Mr. Ramdeep Partap Singh, DAG, Punjab.

Mr. D.K.Bhati, Advocate
for the complainant-respondent No.2.

SUVIR SEHGAL J. (ORAL)

The hearing of this case has been taken up through video conferencing on account of Covid-19 Pandemic.

CRM No.17115 of 2020

Prayer in the application is for placing on record copies of the statements as Annexures P7 to P-9.

Notice of the application to the non-applicants/respondents.

Counsels representing the respondents accepts notice.

After hearing, the application is allowed and the statements,

Annexures P-7 to P-9 are taken on record, subject to all just exceptions.

Main case

This petition has been filed by the petitioners, namely, Raj Kumar, son of Rangi Ram and Reetu @ Ritu wife of Raj Kumar, for quashing of impugned order dated 27.02.2020, Annexure P-6 whereby both the petitioners have been declared as proclaimed persons in FIR No.0145 dated 04.08.2018 under Section 406, 420, 120-B of IPC registered at Police Station Division No.3, Police Commissionerate, Jalandhar, Annexure P-1.

Counsel for the petitioner at the outset submits that in pursuance to the order dated 20.07.2020, the petitioners have surrendered before the trial Court and have deposited the costs and they have both been ordered to be released on bail on their furnishing of bail bonds in the sum of Rs.50,000/- with one surety in the like amount. Counsel further submits that in compliance with the order passed by the trial Court, they have surrendered their passports and, therefore, the order of declaration of proclaimed person would cease to operate. It has been next contended by the counsel that in any case, the petitioners were not in India when the FIR was lodged and that the procedure as prescribed under Section 82 of the Code of Criminal Procedure (for short “the Code”) was not followed before they were declared as Proclaimed persons.

On the other hand, learned State counsel, assisted by the counsel for the complainant, have argued that the petitioners were well aware of the pendency of the criminal proceedings and they deliberately evaded the process of law. They submit that as the petitioners have been declared as proclaimed persons, they are not entitled to any relief from

the Court.

I have considered the rival submissions and reviewed the paper book with the able assistance of the counsels.

While issuing notice of motion, this court, on 20.07.2020 directed the petitioners to surrender before the trial court on or before 31.07.2020 and to deposit cost of Rs.25,000/- each with the District Legal Service Authority, Jalandhar. A perusal of the zimini orders passed by the trial Court, which have been produced by the counsel for the petitioner in court today, show that the petitioners have surrendered before the trial Court and joined the proceedings and that they have been released on bail. The objective of Sections 82 and 83 of the Code is to ensure the presence of the accused. As such, the purpose of the proceedings under Sections 82 and 83, ibid has been achieved. The impugned order dated 27.02.2020, Annexure P-6, whereby the petitioners have been declared as proclaimed persons and notices have been issued for initiating proceedings under Section 83 of the Code, deserve to be quashed.

An examination of the paper book shows that both the petitioners were not in India at the time when the FIR in question was registered against them. The statements, Annexures P-7 and P-8 recorded by the Investigating Officer on 13.06.2019 and 05.07.2019 of the neighbours show that the petitioners were in Canada much prior to the lodging of the FIR. This fact was noticed by the trial Court in the zimini order dated 06.08.2019, Annexure P-3 and the trial Court directed the Investigating Officer to furnish the address of the petitioners of Canada,

so that appropriate orders could be passed. However, without doing so, the proclamation under Section 82 of the Code was issued at the Jalandhar address of the petitioners as can be noticed from the Proclamation appended as Annexure P-4. Still further, a statement of the serving officer recorded by the trial Court on 29.01.2020, Annexure P-5, shows that he had affixed a copy of the proclamation outside the Jalandhar residence of petitioner No.2 on 27.01.2020 wherein it was mentioned that the said accused is required to appear before the Court on 29.01.2020. This shows that the publication was effected two days before the date of appearance before the trial court. The mere fact that on 29.01.2020, the Court adjourned the trial so as to complete the requisite period of 30 days and declared the petitioners as proclaimed offenders on 27.02.2020, does not meet the mandate of Section 82 of the Code of Criminal Procedure.

The petitioners were abroad. There is no material on the record to show that any effort was made to serve the petitioners through the Ministry of External Affairs in Canada. Reliance in this regard can be placed upon a judgment of the High Court of Delhi, in ***Sunil Kumar Vs. State (Delhi)***, 2002(1) RCR (Criminal) 119. It deserves to be observed that while setting aside the impugned order, the High Court of Delhi had relied upon a judgment of the privy counsel in ***Nazir Ahmed Vs. King Emperor***, AIR 1936 PC 253 wherein it was held that “where a power is given to do a certain thing in a certain way, the thing must be done that way or not at all. Other methods of performance are necessarily forbidden.” The impugned order, therefore, cannot be sustained.

In view of the above discussion, the impugned order dated 27.02.2020, Annexure P-6, whereby the petitioners have been declared as proclaimed persons and notice has been issued to the Investigating Officer for furnishing of list of property of the accused for initiating proceedings under Section 83 of the Code and all subsequent proceedings arising therefrom are ordered to be quashed. Since the petitioners have already joined the proceedings, they are directed to appear before the trial Court on all dates and not to delay the proceedings of the trial.

With these observations, the petition stands disposed of.

20.08.2020

pooja saini

(SUVIR SEHGAL)**JUDGE**

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No