

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

217

CRM-M-48912 of 2019
Date of Decision: 19.06.2020

Malkiat Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. P. S. Sekhon, Advocate,
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

AMOL RATTAN SINGH, J. (ORAL)

All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

On 10.06.2020, the following order had been passed in this case:-

“CRM no.12921 of 2020

All the cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

By this application, advancement of the date of hearing in the accompanying petition is sought.

Mr. Sekhon, learned counsel for the applicant-petitioner, submits that with the lock down having been eventually opened completely (other than at night), the police is now wanting to arrest the petitioner and therefore the date of hearing in the accompanying petition may be advanced, which otherwise fixed for hearing on

22.07.2020.

He further submits that as a matter of fact, the applicant-petitioner, though declared to be a proclaimed offender, was not even present in India at the time when the occurrence which is subject matter of the complaint filed against him and his family members, is alleged to have taken place, with the petitioner being in Dubai from 2011 to 2014, the alleged date of occurrence being 31.05.2013.

Without making any comment on the actual merits of the aforesaid contention, the application is allowed and the date of hearing in the accompanying petition is advanced to today itself.

CRM-M-48912 of 2019

By this petition, the petitioner seeks quashing of the impugned order dated 18.09.2017 (Annexure P-2) even though he has been declared to be a proclaimed offender after a criminal complaint was registered against him and his family members, alleging therein the commission of offences punishable under Sections 323, 341, 354 and 506, read with Section 34 of the IPC, such complaint having been registered before the competent court at Roopnagar.

The co-accused of the petitioner, i.e. his mother, sister and father, Kuldeep Singh, have been convicted for the commission of offences punishable under Sections 323 and 506 of the IPC but as regards the sentence imposed upon them, his mother and sister having been released on probation.

Mr. Beniwal, learned State counsel, points to paragraph 14 of the judgment of the learned trial court, in which the specific role attributed to the petitioner in the occurrence has been described, to the effect that he caught hold of the complainant (his wife) and pulled her hair and started abusing her while giving her fist blows on her body. Mr. Sekhon, learned counsel for the petitioner, however again reiterates that when the petitioner was not present in India at that time, obviously the allegation against him is wholly false. Without making any comment on the correctness of that contention, the petitioner is directed to surrender before the learned CJM/Duty

Magistrate, Roopnagar, within one week of today. He shall produce before her/him his passport, with the learned CJM/Duty Magistrate to determine therefrom as to whether the petitioner was actually in India on 31.05.2013 or not. If the learned Magistrate finds that the petitioner was not in India on that date, as per the relevant immigration stamps on his passport, she/he would release the petitioner on interim bail to her/his satisfaction, till the next date of hearing fixed before this court, but if it is found that the petitioner was actually in India on that date, i.e. 31.05.2013, such bail shall not be granted to the petitioner, with the learned Magistrate to send her/his report, either online or otherwise, to the Registrar (Judicial) of this court, before the next date of hearing.

Obviously, the commission of the offence alleged (against the petitioner) in the criminal complaint is different to proceedings under Section 174A of the IPC, with the petitioner having been declared to be a proclaimed offender upon not having appeared before the court when summoned to do so; but especially in the current situation of the pandemic, it is considered appropriate that if the petitioner is not found to not have been present in India on the date that the alleged occurrence in the main case took place, he should be granted protection for him to surrender before the court to face trial in the complaint that was filed against him.

Hence, the above order is accordingly passed, with either the order granting bail to the petitioner, or the report of the learned Magistrate (not granting such bail, for the reason that the petitioner was found to be in India on the date of occurrence), be put up before this court on the next date of hearing.

Of course, it is rather strange that the petitioner would not have presented himself during the entire course of the trial before the trial court to simply present before it the above contention to the effect that he was not even in India at the relevant time, but be that as it may, since a specific contention to that effect has been raised, this order is being passed for the learned CJM/Duty Magistrate to first

determine the authenticity thereof as per the record on the petitioners' passport, and to thereafter admit him to bail or simply send a report to this court, stating to the effect that the petitioner was found to be in India on 31.05.2013 (if that is so).

Naturally, the learned Magistrate would observe all precautions as she/he deems necessary, to ensure that the passport presented before her/him by the petitioner is duly sanitized or at least that it is not touched by her/him without due care of wearing gloves etc. while examining the passport, with the petitioner also to also to present himself before the learned Magistrate by observing all norms as are necessary for 'safe keeping' in this pandemic, by wearing a mask, except to remove it at a safe distance to enable the learned Magistrate to identify the petitioner.

The petitioner shall also wear gloves at the time that he presents himself before the Magistrate.

Adjourned to 19.06.2020."

Learned counsel for the petitioner submits that the petitioner has not reverted back to him at all with regard to whether or not he appeared before the learned Chief Judicial Magistrate/Duty Magistrate, Roopnagar, in terms of the above order.

As per the Reader of this court, no report has also been received from the learned CJM/Duty Magistrate, as to whether the petitioner appeared or did not appear before that court.

Obviously therefore, an inference has to be taken by this court that he did not appear and consequently this order was not even presented before that court.

Consequently, without making any comment on the merits of this case, I see no reason to entertain this petition, which is dismissed.

However, if eventually the petitioner is found to have presented

himself before the Magistrate in terms of the aforesaid order, and he shows proof thereof to the learned counsel for the petitioner, or produces any order passed by that court, in terms of the order of this court dated 10.06.2020, the petitioner would be at liberty to file another petition on the same cause of action, giving all the facts in detail therein.

June 19, 2020
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes