

121

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27757-2021

Date of Decision: 20.07.2021

Anita Sharma

.. Petitioner

Vs.

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Gursimran Singh Madaan, Advocate for the petitioner.

...

Manoj Bajaj, J. (Oral)

Petitioner has filed this petition under Section 482 Cr.P.C. for challenging the order dated 12.03.2020 (Annexure P-5), whereby she was declared proclaimed offender in case FIR No.49 dated 10.05.2019, registered under Sections 406, 420, 201 and 120-B IPC, Section 24 Immigration Act, 1983 and Section 13 Travel Professional Regulation Act, 2014, at Police Station Navi Baradri, District Police Commissionerate, Jalandhar.

The facts leading to the petition are that on the basis of a complaint given by complainant Sukhwinder Kumar s/o Gurbax Rai, a case FIR No.49 dated 10.05.2019, under Sections 406, 420, 201 and 120-B IPC, Section 24 Immigration Act, 1983 and Section 13 Travel Professional Regulation Act, 2014 was registered, and the allegations read as under:

“In reference to the complaint No.1222-DCP dated 22-04-19 To, the respected Commissioner Police Jalandhar. Subject: regarding commission of fraud by Kapil Sharma Managing Director Study Express, Anita Sharma wife of Kapil Sharma and Counsellor Partap Study Express Big Baazar, Third Floor opposite President Hotel Jalandhar took Rs.13,49,750/- (thirteen forty thousand seven hundred fifty rupees) for providing study visa and by giving forged Diploma Certificate. Dear Sir, It is humbly requested that I am Sukhwinder Kumar son of Sh. Gurbax Rai resident of village Khiva Tehsil Nakodar Police Station Nakodar District Jalandhar and employed on duty at Police Station Shahkot as ASI Naka Kawaan Wala Pattan in Police Department. In October 2018, the counsellor Partap introduced me to the Managing Director of Study Visa Express and his wife Anita Sharma, at their office. To whom I told that My son Shubham has passed Plus two and there is a gap of 4 years in his study, whereby the counsellor Partap told me that we will provide 2 Diploma Certificate of 4 years by preparing and will send to Canada on Study base. I asked Kapil Sharma to give us the account number of the college, in which we will submit the fee on which Kapil Sharma told me to sent the fee in his account, only then he will transfer the money into the account of the college. On date: 15.11.2018 I transferred Rs.7,35,750/- (Seven lakh thirty five thousand seven hundred fifty rupees) from my S.B.I. (State Bank of India) Nakodar account bearing No.10377928491, into the account bearing No.008201555114 of Kapil Sharma. Then on date:26.11.2018 I transferred Rs.5,49,500/- (five lakh forty nine thousand five hundred rupees) from my H.D.F.C. Bank Lambra account bearing No.5010058792526, into the account bearing No.008205006851 of Kapil Sharma the Managing Director, and gave Rs.65,000/- to the counsellor Partap for the Diploma Certificate, after which, the counsellor Partap provided 4 forged Diploma Certificates. Now, five months have passed, but still, the Managing Director of the Study Express and his wife Aneeta Sharma have not got provided the visa of my son Shubham and nor they are returning our money back and are hanging us by making excuses. This is my request before you that kindly take serious action against the abovementioned accused(s) and get my money back. I shall be grateful to you. Yours sincerely Sd/- Sukhwinder Kumar son of Gurbax Rai resident of village Khiva Tehsil Nakodar Police Station Shahkot District Jalandhar Mobile No.981433-38055.”

The trial Court in order to secure the presence of the accused, resorted to the coercive steps by issuing arrest warrants and the said orders have been appended with the petition as Annexures P-2 to P-4.

However, the trial Court found that the accused persons are evading their service, therefore, initiated the proceedings under Section 82 Cr.P.C. and issued the proclamation on 07.02.2020 (Annexure P-6) for appearance of accused on 11.03.2020, pursuant to order dated 30.01.2020 (Annexure P-4). The proclamation notice was executed and as the period of thirty days ended on 11.03.2020, but it being a holiday, the case was taken up on 12.03.2020, whereby noticing the non-appearance of the accused, the Court declared her proclaimed offender. It is the said order, which has been challenged on the ground that no clear notice of thirty days was given to the petitioner before declaring her proclaimed offender and in support of her case, the petitioner has relied upon decision of this Court rendered in case bearing CRM-M-13638-2013 (O&M) titled as **Ashok Kumar Vs. State of Haryana and another.**

Learned counsel for the petitioner has argued that the proclamation notice under Section 82 Cr.P.C. dated 07.02.2020 (Annexure P-6) was issued for appearance of accused (petitioner) on 11.03.2020, but in the said notice itself, it is mentioned that the arrest warrants issued against the petitioner were not served, therefore, the said service was not effective. He states that as per the said notice,

so the trial Court wrongly declared her proclaimed offender, on next day, as fresh proclamation notice was required to be issued. He submits that the impugned order deserves to be quashed.

During the course of hearing, it is not disputed by the learned counsel that the petitioner is accused in various criminal cases, as list of 14 cases is contained in para 9 of the petition and it is fairly stated by Mr. Madaan, learned counsel that all these cases are pending before the same Court, wherein the address of the petitioner is common.

The argument of the learned counsel that the proclamation notice dated 07.02.2020 (Annexure P-6) records the fact that the petitioner has not been served is misplaced, as a perusal of the said notice makes it clear that the trial Court recorded its satisfaction that the accused has absconded or is avoiding the service of the arrest warrants. The other argument that on 11.03.2020, the Court was closed on account of holiday, so a fresh notice was required to be issued, is also without any force, as the petitioner has never shown any inclination to join the proceedings and as the mandatory requirement of Section 82 Cr.P.C. stands fulfilled when a clear notice of thirty days was given to the petitioner, therefore, the trial Court rightly declared her proclaimed offender. It seems that the petitioner is closely watching the case proceedings, but has chosen not to participate therein because the petitioner was declared proclaimed offender on 12.03.2020, but she has chosen to file this petition after a long delay of a year and four

months i.e. on 13.07.2021, Further, the judgment in Ashok Kumar's case (supra) is not applicable to the facts and circumstances of the case, as in the said case, the publication was effected on 09.02.2013 and the accused was directed to appear on 06.03.2013 i.e. less then 30 days

In view of above, this Court does not find any reason to interfere with the impugned order dated 12.03.2020 (Annexure P-5).

Dismissed.

20.07.2021
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No