

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

1. CRM-M-39201-2021

Balwant Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

2. CRM-M-39222-2021

Balwant Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

Reserved on : 04.10.2021
Pronounced on : 06.10.2021

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Lupil Gupta, Advocate
for the petitioners in both cases.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. K. B. Raheja, Advocate
for respondent No. 2/complainant in both cases.

ARVIND SINGH SANGWAN, J.

This common order shall dispose of above noted two petitions
as they arise out of the same criminal complaint and involve the same

parties.

Prayer in the first petition is for grant of anticipatory bail to petitioners Balwant Singh and Shavinder Kaur in Criminal Complaint No. 66 dated 31.07.2013, filed under Sections 420, 406, 409, 34 of the IPC and the prayer in the second petition is for quashing of summoning order dated 15.06.2017, whereby the aforesaid petitioners have been summoned to face trial in aforesaid complaint as well as for quashing of order dated 11.06.2018, vide which both the petitioners have been declared proclaimed offenders by the trial Court.

Learned counsel for the petitioners submitted that the petitioners were working in Sharjah, United States of Emirates (UAE) for a considerable long time and as per the passport entry of the petitioners, they initially went to UAE in 1997. It is further submitted that the petitioner came back to India in January, 2014, February, 2015, November, 2015 and March, 2018 and went back to UAE after one month.

Learned counsel for the petitioners further submitted that the respondent No.2/complainant has filed the aforesaid criminal complaint under Sections 420, 406, 409, 34 of the IPC against the petitioners as well as one Jaswant Singh @ Jassa with the allegations that the complainant and his father were working as a Mason and in the year, 2011, accused No. 3 Jassa Singh, Numberdar met father of the complainant and told that his brother-in-law (Jija) i.e. accused No. 1 Balwant Singh, is running a business of construction in Dubai and accused No. 3 further stated that a handsome salary is given there along with boarding and lodging with good living condition and that he should send his son (complainant) to Dubai, where he would get handsome salary and good living condition. Thereafter, the

complainant was taken to Dubai, however, he was not given proper work and was sent back to India without wages. When the complainant returned to India, he started demanding money from the accused persons but they refused to pay the amount and cheated the complainant of an amount of Rs. 45,000/-.

On filing the present complaint, the Additional Chief Judicial Magistrate, vide impugned order dated 15.06.2017, summoned all the three accused to face trial. Later on, both the petitioners herein were declared proclaimed offenders, vide impugned order dated 11.06.2018, after publication of proclamation in the newspaper under Section 82 Cr.P.C. Thereafter, the case was fixed for prosecution evidence.

Learned counsel for the petitioners further submitted that co-accused Jaswant Singh @ Jassa, who faced full length trial, stands acquitted by the trial Court by observing that the evidence of CW1 and CW2 is not convincing qua that accused.

Learned counsel for the petitioners has made two folds arguments. Firstly that without following the proper procedure prescribed under Sections 82/83 Cr.P.C., the petitioners have been declared proclaimed offenders. Learned counsel, with reference to passport entries, has submitted that at the relevant time when the complaint was filed and the petitioners were summoned, they were not in India, though on and off, they were coming to India and staying here for one month and then going back to UAE.

The next argument raised by learned counsel for the petitioners is that since co-accused Jaswant Singh @ Jassa stands acquitted on the same set of allegations, the impugned order is liable to be set aside as the

complainant cannot produce any proper evidence against the petitioners.

In reply, learned counsel for the complainant has submitted that as per passport entry and para 3 of the petition, it is stated that petitioners came to India on 15.03.2018 and went back on 01.05.2018 and the proclamation was issued by the trial Court on 26.02.2018 in the newspaper for 06.04.2018 and on that relevant time, the petitioners were admittedly in India and were having due knowledge of the publication in the newspaper and, therefore, the trial Court has properly followed the provisions of Sections 82/83 Cr.P.C. It is further submitted that even prior to that, summons and warrants were issued to petitioners for number of time but they evaded the service.

Learned counsel for the complainant has next argued that the allegations in the complaint against the petitioners and against co-accused Jaswant Singh @ Jassa, who stands acquitted, are on different footing as the allegations of committing fraud and cheating with the complainant are directly against the petitioners and not against said co-accused and mere fact that the trial Court has acquitted him is not sufficient to hold that the petitioners are also liable to be acquitted.

It is worth noticing here that considering the fact that the dispute is only of Rs. 45,000/-, which the petitioners have not paid since 2013 and they are evading their service before the trial Court, which has incurred into huge expenditure for publication etc., this Court has made efforts to convince the petitioners to settle the dispute by making the said payment to complainant, for which, learned counsel for the complainant had agreed to accept the same along with nominal interest, however, learned counsel for the petitioners did not make any efforts and opted to argue the

case on merits.

After hearing learned counsel for the parties, considering the submissions made by learned counsel for the parties, I find that at the relevant time when the publication, under Section 82 Cr.P.C., was made, both the petitioners were in India and, therefore, it cannot be said that the trial Court has not followed the mandatory provisions prescribed under Sections 82/83 Cr.P.C.

Further, the nature of allegations in the complaint against said co-accused Jaswant Singh @ Jassa, who stands acquitted by the trial Court, is on different footing as there are direct allegations against the petitioners of committing fraud and cheating with the complainant of Rs. 45,000/-, who is a poor Mason.

Accordingly, I find no merit in the present petitions and the same are dismissed with costs of Rs. 10,000/-, which will be deposited with the District Legal Services Authority, Faridkot within a period of 30 days from today on account of State's expenditure incurred on publication etc. as well as for delaying the trial for a period of more than eight years.

A photocopy of this order be placed on the file of other connected case.

06.10.2021

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No