

132.

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

CRM-M-41766-2021

Date of Decision: 06.10.2021

GURMEET SINGH

.... Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Arun K. Bakshi, Advocate,
for the petitioner.

JAISHREE THAKUR.J (Oral)

This is a petition that has been filed under Section 482 Cr.P.C. seeking to challenge the order dated 12.02.2018 by which order, the learned Judicial Magistrate Ist Class, Jalandhar has declared the petitioner herein as a Proclaimed Offender in FIR No.128, dated 17.06.2017, under Sections 498-A, 406 IPC (Section 420 IPC and Section 10 & 12 of the Passport Act added later on), Police Station Adampur, District Jalandhar.

Learned counsel for the petitioner raises a two-fold contention to challenge the said order by relying upon the provisions of Section 82 Cr.P.C. which pertains to proclamation for a person absconding. It is argued that in terms of section 82(4) Cr.P.C. when a proclamation is published under sub-section (1) in respect of a person accused of an offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 339, 459 or 460 of the Indian Penal Code, and such

person fails to appear at the specified place and time as fixed in the proclamation, the court may, after making an inquiry, pronounce him a proclaimed offender. In the instant case, the petitioner herein has been nominated as an accused under Sections 406 and 498A of IPC which sections do not find any mention in Section 82(4) of Cr.P.C. and, therefore, he could not have been declared a proclaimed offender as has been done in the present case. It is also argued that effective service was not carried out as the petitioner had left for Italy as far back as 11.02.2016 and the FIR was registered on 17.06.2017. The petitioner continues to reside in Italy and the service ought to have been effected upon him through their embassy, which has not been done.

Notice of motion.

At this stage, Mr. A.S.Gill, Senior DAG, Punjab, has put in appearance and accepts notice on behalf of respondent-State. Appearance has also been caused by Mr. Naveen Sharma (Moudgil), Advocate, on behalf of respondent No.2-complainant, who would submit that she would have no objection in case the order declaring the petitioner as a proclaimed offender is set aside.

I have heard learned counsel for the parties.

The facts are not in dispute that the petitioner has been declared as a proclaimed offender by virtue of the order dated 12.02.2018 as he did not put in an appearance when summoned under Sections 406 and 498A IPC. The contention raised by learned counsel for the petitioner that the Magistrate could not have declared the petitioner as proclaimed offender, as he is not accused of any of offences specified under sub-section 4 of Section

82 Criminal Procedure Code has merit. Section 82(4) Cr.P.C. stipulates that a person, in respect of whom a proclamation has been published under section 82(1) Cr.P.C., if he fails to appear at the specified place and time required by the proclamation and if he is accused of offences mentioned in Section 82(4) Cr.P.C., the court may pronounce him as a proclaimed offender. The sections enumerated in 82 (4) of the Criminal Procedure Code are 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 339, 459 or 460 of the Indian Penal Code, and Section 406 (criminal breach of trust), 420 (cheating) and 120B (criminal conspiracy) under the Indian Penal Code does not find mention therein. Therefore, the petitioner could not be declared proclaimed offender as the same is in contravention to sub- section 4 Section 82 Criminal Procedure Code and, thus, liable to be quashed.

The passport of the petitioner would reveal that he had left for Italy and was residing there when he was declared as a proclaimed offender. When the petitioner does not reside in India, a fact well within the knowledge of respondent No.2, then any service effected in the village would not be a proper service. There is also nothing on record to show that an attempt was made to serve the petitioner at the residence where he ordinary reside either through publication in newspapers or through the embassy. Hence, the order declaring the petitioner as proclaimed offender is improper and is hereby set aside.

Consequently, the petition is allowed and the impugned order is set aside. The petitioner is directed to put in appearance before the trial Court within a period of four weeks and on doing so, he be admitted to bail.

The arrest of the petitioner is stayed limited to a period of four weeks to enable him to appear before the trial Court.

(JAISHREE THAKUR)
JUDGE

06.10.2021
sanjeev

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No